TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 25

FEDERAL LAND BANK OF WICHITA, PETITIONER,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

PETITION FOR CERTIORARI FILED DECEMBER 29, 1960
CERTIORARI GRANTED MARCH 20, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 614

FEDERAL LAND BANK OF WICHITA, PETITIONER,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

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[fol. A] [File endorsement omitted]

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 41,842

THE FEDERAL LAND BANK OF WICHITA, a Corporation of Wichita, Kansas, Appellant,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE CRONIC, County Treasurer; and EUNICE RICH, Clerk of the District Court; THE STATE OF KANSAS, Intervener, Appellees.

Appeal From the District Court of Kiowa County, Kansas
Honorable Ernest M. Vieux, Judge

Abstract of Appellant—Filed January 5, 1960

This action was filed by the appellant on August 29, 1958, for the purpose of enjoining and restraining the appellees, exclusive of the Intervener, from taking any further action in connection with the collection or enforcement of certain personal property taxes levied and assessed against it. Relief prayed for was predicated on the fact that appellant is a Federal instrumentality, and [fol. 2] as such is exempt from payment of personal property taxes assessed against it by the State or any political subdivision thereof.

PETITION

Plaintiff for its cause of action against the defendants and each of them alleges and states:

I.

That said plaintiff is a corporation duly created, organized, and existing under and by virtue of an Act of Congress, entitled "The Federal Farm Loan Act," approved July 17, 1916, and acts amendatory thereto; that it maintains its principal office and place of business in the City of Wichita, State of Kansas, and that it is authorized and chartered to transact and do business in the States of Kansas, Colorado, Oklahoma and New Mexico;

That the defendant, Ben H. Paxton, is the duly elected, qualified and acting Sheriff of Kiowa County; and the defendant, Alice Cronic, is the duly elected, qualified and acting County Treasurer of said county; and that the defendant, Eunice Rich is the duly elected, qualified and acting Clerk of the District Court of said county.

II.

That said plaintiff is the owner of certain mineral reserves upon, in and under various tracts and parcels of real property located in Kiowa County, Kansas, including the Northeast Quarter (NE¼) of Section 21, Township 29 South, Range 18 West; that there are no ad valorem taxes legally and lawfully assessed against such mineral reserves which at this time remain unpaid and delinquent.

[fol. 3] III.

That said plaintiff is the owner of an undivided one-half (½) interest in and to all of the oil, gas and other minerals and mineral rights in, upon and under said Northeast Quarter (NE¼) of Section 21, Township 29 South, Range 18 West, for a period of 20 years from and after May 25, 1943, and so long thereafter as oil or gas or other minerals are produced therefrom or so long as said premises are being developed or operated; that said mineral interest was reserved by said plaintiff in connection with the execution of a warranty deed, dated July 22, 1946, and duly recorded in the office of the Register of Deeds of Kiowa County on the 27th day of August,

1946, at 10:00 o'clock A.M. in Volume 62 of Deeds at page 530. That on or about June 3, 1955, this plaintiff executed and delivered to Gulf Oil Corporation an oil and gas lease covering its mineral interest as herein alleged, and that according to the terms and conditions of said lease, including amendments thereto, said lessee was authorized to and did create and organize, according to law and proper regulations pursuant thereto, a drilling unit including all of Section 21, Township 29 South, Range 18 West, and designated and referred to as "Section 21 Gas Unit." That according to the terms and provisions of said oil and gas lease, said lessee obligated itself to pay to this plaintiff certain cash royalties on all oil, gas or other minerals severed and removed from the tract above described or from any drilling unit of which it became a component part.

IV.

Said plaintiff further states certain gas wells have been drilled upon the drilling unit above referred to and of which the Northeast Quarter (NE¼) of Section 21, Township 29 South, Range 18 West, is a component part, and that by reason thereof, said plaintiff is entitled to certain royalty payments under the terms and conditions of its said lease and amendments thereto; that certain taxes have [fol. 4] been erroneously and illegally assessed against certain personal property and certain undivided interests in and to the oil and gas leasehold estates and the oil and gas wells, personal property, and drilling equipment located thereon as represents this plaintiff's royalty interest in and to the oil and gas produced from its mineral reserves herein referred to or from the unit of which it forms a component part. That said assessment was made by the duly elected, qualified and acting assessor in and for said county but that said assessment is contrary to law, illegal and void in that said plaintiff was at the time of said assessment and is now wholly exempt by law from payment of any and all taxes, including Federal, State, municipal and local, except such taxes as may be lawfully levied and assessed against said plaintiff upon real estate

held, purchased, or lawfully acquired by it, as provided by Title 12 U.S.C. Sec. 931.

V.

That, pursuant to said unlawful assessment, the defendant, Alice Cronic as County Treasurer, has issued and placed in the hands of the Sheriff for collection a certain tax warrant representing the erroneous and unlawful assessment against the royalty interest of this plaintiff, a true and correct copy of which is hereto attached, identified as Exhibit 1, and by reference made a part hereof.

VI.

That, prior to the issuance of said tax warrant and on or about July 14, 1958, said defendant, Alice Cronic as County Treasurer, prepared and mailed a notice to this plaintiff of said illegal and void assessment and demanding payment of $46.51. Said original notice is hereto attached, marked Exhibit 2, and by reference made a part hereof. That subsequent to the receipt of said notice, this plaintiff has requested the defendant, Board of County Commissioners, to abate and cancel the taxes erroneously and illegally assessed as referred to in said no-
[fol. 5] tice but that said defendant has failed, neglected and refused to abate and cancel said taxes. Said plaintiff further states that the defendant, Ben H. Paxton as Sheriff of said county, has threatened to and will, unless restrained and enjoined from doing so, collect the amount of said illegal assessment, together with interest and costs, and that by reason of such unlawful action, this plaintiff will suffer irreputable (sic) injury in that its lawful functions will be seriously hindered and impaired unless said defendants, and each of them, are restrained and enjoined from the commission of any further acts in connection with the collection or enforcement of said tax warrant as herein described and representing personal property taxes erroneously, illegally and unlawfully assessed as herein alleged; that said plaintiff has no complete and adequate remedy at law.

Wherefore and by reason of the foregoing, this plaintiff prays for an order, judgment and decree of this court perpetually enjoining and restraining the defendants herein, and each of them, from the commission of any further acts in connection with the collection or enforcement of the tax warrant herein described; that the defendant, the Board of County Commissioners, be ordered and directed to abate and cancel said tax warrant and all tax assessments represented thereby, and that said plaintiff has such other and further relief to which it may be entitled under the facts as herein alleged.

[fol. 6]

Exhibit "1" to Petition

(See Opposite) ☞

EXHIBIT "1" TO PETITION

PERSONAL PROPERTY TAX WARRANT
State of Kansas, Kiowa County, SS. No. 896

Office of County Treasurer, Greensburg, Kansas

To the Sheriff of Said County, Greeting:

YOU ARE HEREBY COMMANDED under and by virtue of Chapter 455 Session Laws of Kansas, 1947, to levy of the goods, chattels and tenements

of Federal Land Bank

whose address is Wichita, Kansas

the sum of

plus interest at 10% per annum and costs thereon, from All 19
(Dec. 20th if full year, June 20th if last half

to date of payment, being the amount of 19
(All or 2nd Half)

Personal Property tax assessed for all purposes, which is delinquent and unpaid. You will add your costs for collection and make due return of this warrant to my office on or before October 1, 1958.

Given under my
hand this date 8-15-58
(ORIGINAL)

/s/ Alice Cronic
County Treasurer

Assessed in Ursula Twp.

SD No. 1 RHS NO. G Cem. Dist. No. F

Tang. Val. $1190 Intang. Val. $

Tangible Tax (Full Amount)	43.58
Intangible Tax (Full Amount)	
Dog Tax (Full Amount)	
Grain Tax (Full Amount)	
Total Tax (Full Amount)	43.58
Tangible Tax (2nd half)	
Intangible Tax (2nd half)	
Dog Tax (2nd half)	
Grain Tax (2nd half)	
Treasurer's Warrant Fee	.20
Amount of Warrant	43.78
10% Interest on Warrant From Dec 20th or June 20, 19	
Sheriff's Fee	
Commission and Mileage	
Total Amount to be Collected	

[fol. 7]

EXHIBIT "2" TO PETITION

Oil and Gas Properties and Production.

TREASURER'S OFFICE, KIOWA COUNTY

Notice—Delinquent Personal Property Tax

Greensburg, Kansas, July 14, 1958

The records in this office show that your Personal Property Tax for the year of 1957, assessed in Urusla Twp. City, is unpaid. The total amount due plus interest to August 15 is $ 46.51.

Unless paid by August 15, I am compelled by law (Sec. 2, Ch. 360, Session Laws 1945) to issue a Personal Property Tax Warrant to the County Sheriff and such Warrant shall be recorded as a judgment against you in the District Court. Pay now and avoid additional costs.

Please return this statement when you Remit.

Alice Cronic
Kiowa Co. Treas.

Page 140 Line 33.

Roberts, Hutchinson, Kansas

SW 21-29-18

RECEIVED
JUL 15 1958
FEDERAL LAND BANK

[fol. 8]

ANSWER—Filed November 13, 1958

Now comes the defendants, and each of them, and for answer to plaintiff's petition denies each and every allegation of fact in the petition contained.

Wherefore, defendants demands judgment that plaintiff take naught by its suit and that defendants have and recover their costs herein.

PETITION FOR LEAVE TO INTERVENE—Filed February 28, 1959

Comes now the State of Kansas, by and through its attorney general, John Anderson, Jr., and respectfully petitions the court for an order allowing the State of Kansas to intervene and be made a party defendant in the above entitled cause and, in support thereof, shows to the court:

That the above entitled action is an injunction to restrain the collection of personal property taxes on mineral royalty interests levied under a state statute and against the plaintiff, the Federal Land Bank of Wichita, in Kiowa County, Kansas.

That the plaintiff each year derives similar mineral royalties from substantial property interests located not only in Kiowa County but in other counties through the state.

The rights and interests of the citizens of the State of Kansas as manifested by their state personal property tax statutes here involved will be materially affected by the outcome of this proceeding, and the matter is one of general state wide interest and concern.

[fol. 9] Wherefore, the State of Kansas prays the court for an order allowing it to intervene and be made a party defendant herein and to file its answer herein.

ORDER AUTHORIZING INTERVENTION—March 4, 1959

Comes now to be heard the Petition for leave to intervene filed herein by the State of Kansas, by and through its Attorney General, John Anderson, Jr. Upon due consideration of this matter, the court finds that, and hereby orders that the State of Kansas may intervene herein and is hereby made a party defendant with leave to file an answer herein within 10 days.

ANSWER OF THE STATE OF KANSAS—Filed March 13, 1959

Comes Now the State of Kansas, intervener and defendant herein, by and through its Attorney General, John Anderson, Jr., and for its answer to plaintiff's

petition in the above entitled cause, denies each and every allegation therein except as hereinafter admitted.

I.

That defendant admits the allegations of paragraph I and admits that plaintiff is the owner of real property in Kiowa County, Kansas, and specifically, a determinable fee interest in an undivided one-half of the mineral estate in the Northeast one-fourth (NE¼) of Section 21, Township 29 South, Range 18 West.

[fol. 10] II.

The defendant admits the allegations of paragraph III and admits that plaintiff is entitled to certain royalty payments as alleged in paragraph IV; admits that personal property taxes for 1957 have been assessed against the royalty interest of the plaintiff, pursuant to G.S. 1949, 79-329 to 334 inclusive, and that a tax warrant for $46.51 unpaid taxes and accrued interest has been issued by the county treasurer, all as alleged in paragraphs V and VI, but the defendant denies all argumentative matter and conclusions of law contained in these paragraphs.

III.

Further answering, the defendant shows to the Court that the plaintiff's power is strictly circumscribed by the federal statutes under which it was created and exists (Title 12, United States Code, Sec. 641 through Sec. 1012); that the primary function of the plaintiff is to provide a rural credit system by which credit should be extended to persons employed in agriculture (*Federal Land Bank* v. *Gaines,* 290 U.S. 247); that the plaintiff has no power, either express or implied, to enter upon and continue original, speculative enterprises, and particularly, the plaintiff does not have power to hold real property interests over protracted periods of time for the purpose of speculating in future profits, rents or royalties that might be obtained from mineral production thereon.

IV.

The defendant further shows to the Court that the plaintiff reserved ownership of a one-half interest in the aforementioned mineral estate when it conveyed the surface estate in 1946; that such reservation and retention of the mineral estate was for the purpose of speculating in future profits, rents or royalties that might be obtained from mineral production thereon; that plaintiff has retained ownership of this mineral estate continuously since [fol. 11] 1946; that plaintiff gave an oil and gas lease to such minerals in 1955; that the royalties here sought to be taxed as personal property are derived solely from and incident to plaintiff's ownership and leasing of this mineral estate; and that, by virtue of such actions, the plaintiff has entered upon and continued over a protracted period of time an original, speculative enterprise unrelated to its primary function. The aforesaid activities of the plaintiff are in excess of the powers granted it by the federal statutes under which it was created and exists, and the ownership of property used solely in furtherance of such activities is likewise in excess of plaintiff's statutory powers.

V.

In enacting Title 12, United States Code, Sec. 931, Congress did not intend to, nor did it, exempt from taxation personal property acquired or held by a federal land bank in excess of its statutory powers, nor is such personal property impliedly exempted from taxation by the federal constitution. Therefore, the plaintiff's royalty interest here involved is not exempt from personal property taxation either by Title 12, U.S.C., Sec. 931, or by the federal constitution.

VI.

As a separate defense to this action, and independent of the allegations in paragraph III, IV and V above, the defendant further answers and shows to the Court that the plaintiff has held title and possession to the real estate here involved (to wit, an undivided one-half in-

terest in the mineral estate of the above described quarter section) for a period in excess of 15 years; that such real estate was purchased or acquired to secure a debt due plaintiff; that Title 12, United States Code, Sec. 781, Fourth (b), prohibits plaintiff from holding title and possession to real estate purchased or acquired to secure a debt due it for a period longer than five years, except with the special written approval of the Farm Credit Ad-
[fol. 12] ministration; that plaintiff relies on a written regulation of the Farm Credit Administration (See Exhibit "A", attached hereto) for approval of its holding this property beyond 5 years; that this written regulation grants no special approval as contemplated by the federal statute; that this regulation illegally purports to delegate to the plaintiff the administrative discretion of the Farm Credit Administration and, in effect, authorizes plaintiff to approve its own actions in holding title and possession to real estate beyond 5 years; and such written regulation is, for these reasons, wholly void and of no effect.

VII.

Plaintiff's action in holding this real estate for a period longer than five years is in violation of this federal statute (Title 12, United States Code, Sec. 781, Fourth (b)); plaintiff's royalty interest here sought to be taxed by the State of Kansas is derived from and incident to plaintiff's continuing illegal ownership of this real estate; and the ownership of such royalty interest is, therefore, beyond the statutory power of the plaintiff.

VIII.

Congress did not intend to, nor did it, exempt from taxation personal property acquired or held by plaintiff where the acquisition or holding is beyond and in violation of its statutory power. Therefore, plaintiff's royalty interest here involved is not exempt from personal property taxation either by Title 12, U.S.C. Sec. 931, nor is such property impliedly exempted from taxation by the federal constitution.

Wherefore, defendant prays that the plaintiff take nothing herein, and for judgment in favor of the defendant and against the plaintiff, and for the costs of this action.
[fol. 13] The original defendants on March 31, 1959 filed an answer which is not abstracted since it is identical with that of the intervener.

Appellant filed a reply to the answer of intervener which by agreement of counsel on the date of trial was also considered as a reply to the amended answer of the original defendants.

The reply filed by the appellant to the answer of the intervener, and which by agreement is also considered as a reply to the amended answer filed by the original defendants, reads:

REPLY OF THE PLAINTIFF TO THE ANSWER OF STATE OF KANSAS

Comes now the plaintiff and for its reply to the answer filed herein by the intervener, the State of Kansas, alleges and denies as follows:

I.

Said plaintiff denies generally each and every material allegation, matter, statement and thing contained in said answer which is inconsistent or in any wise controverts or denies any allegation, matter, statement or thing contained in said plaintiff's petition.

II.

Said plaintiff for further reply specifically denies that it is holding minerals illegally in and under the real property described and referred to in said answer or in and under or in connection with any other real property located in the County of Kiowa, State of Kansas, but said plaintiff alleges the facts to be that it is holding said minerals and mineral reserves strictly in accordance with the laws under which it was created and lawful rules and regulations authorized thereby and promulgated in pursuance thereto.

[fol. 14] III.

Said plaintiff further specifically denies the right, authority, or privilege of said intervener to challenge the acts of this plaintiff as ultra vires but alleges that such right, authority or privilege may only be exercised by the supreme sovereign under which said plaintiff was organized and is existing.

Wherefore, said plaintiff prays for an order, judgment and decree in accordance with the prayer of its original petition.

PLAINTIFF'S EVIDENCE

On March 31, 1959, the case was regularly called for trial, and all parties announced themselves as being ready. After the opening statement by counsel for plaintiff, counsel for intervener made his opening statement, a portion of which reads:

> "* * * the Bank is a governmental instrumentality created by federal statute, and the only powers it has are the powers delegated to it by these federal statutes, either express or implied; that any activity or enterprise it undertakes which is not expressed or implied by its delegated powers is beyond those powers; that Congress in exempting the Federal Land Bank from personal property taxes intended that that exemption extend only so far as the Bank's activities were in furtherance of their statutory power; *that the minute they stepped beyond the extent of their statutory power their tax immunity ceased;*" (Italics Ours)

Preliminary to the introduction of evidence on behalf of the plaintiff, the following stipulation was entered into by counsel for the respective parties:

> [fol. 15] "Mr. Jamison: I want to make one thing clear: This action does not involve real property taxes. There is no contention here on the plaintiff's part that it is in any manner exempt from the payment of

real property taxes, and this action has to do only with the assessment and collection of personal property tax. Now isn't that correct, Mr. Londerholm?

"Mr. Londerholm: This involves a personal property tax; that's correct."

Plaintiff then offered Exhibits Nos. 1, 2, 3, and 4 from the case of Federal Land Bank of Wichita vs. George Noland, et al., Case No. 4444, and which exhibits are hereafter identified and abstracted. Plaintiff also offered as evidence Exhibit No. 5 which is also hereinafter abstracted. Title 12 United States Code, Section 701, 1138(c) Section 931, and Section 781(a) and (b), and Section 665, also Title 6 Section 10.64 1956 Revised Code of Federal Regulations are also offered in evidence. The tax warrant attached to the petition was also identified as a correct copy of the original and offered in evidence. All of the exhibits referred to were admitted without objection.

Defendant's Evidence

Counsel for the intervener on its behalf and on behalf of the defendants offered in evidence Exhibits Nos. 1, 2, 3 and 4 from the files in the Federal Land Bank of Wichita vs. George Noland, No. 4444, which are hereinafter identified and abstracted. Counsel for intervener also offered in evidence Exhibit A attached to its answer, all of which [fol. 16] was excluded on objection by plaintiff's counsel except Title 6, C.F.R. Section 10.64 Rev. 1956.

H. A. Beverlin was called as a witness on behalf of the defense, and testified in substance, as follows: That he is an oil proration analyst for the Conservation Division of the State Corporation Commission; that as such he is required to keep certain information in connection with oil and gas production in the State. The records kept are of a public nature and contain information regarding production of oil and gas on the NE¼ Section 21-29S-18W, Kiowa County, which is part of the Pardoe Unit. Counsel for the intervener then offered in evidence Exhibits Nos. 5, 6 and 7, which are, respectively, application, order, and plat of acreage attributable to a gas well. The exhibits

were offered for the purpose of showing that the appellant has no express or implied power to enter upon a speculative enterprise unrelated to its primary function. These exhibits were admitted over appellant's objection. Defendant's Exhibit 8, which appears to be an order by the Conservation Division describing the boundaries of the field which include the tract in question, was offered and admitted over the following objection interposed by counsel for the appellant.

> "Mr. Jamison: The plaintiff objects to the instrument as immaterial, irrelevant, not tending to prove or disprove any of the material issues of the case, and only a confusion of the record. If the Court please, we might say here that this will get off onto a cold trail and never will get back.
> [fol. 17] "It is admitted by both parties that this Northeast Quarter of 21 is a portion of the drilling unit and that there has been production of oil, gas or hydrocarbons from that drilling unit, and that the Federal Land Bank has participated in its prorata interest in that production, and that production has been taxed as personal property.
> "What I can't understand is what other and additional purpose do these instruments and all this material from the Conservation Division serve. I don't see that they serve anything except just to confuse the record and to make it more voluminous.
> "If there is any reason why this material should be in evidence I'd like to have it all in there. But I don't see how it could assist the Court or assist anybody in arriving at the issue in this case. I don't understand counsel for the State."

Counsel for the State also offered Exhibits 9A through 9F, which purport to be a copy of the minutes of the Kansas Nomenclature Committee, and which contain the naming of the discovery well and the date of the Nichols Field. They were admitted over appellant's objection. The minutes show that the discovery well was completed on March 2, 1955 as a producing well and that gas was produced and marketed sometime subsequent thereto.

Paul Buser was called as a defense witness and testified in substance as follows: That he is employed by the Federal Land Bank in charge of the mineral and real estate department; that the records in his possession show all income from the tract in question but do not reveal the internal expense incidental thereto.

[fol. 18] Defendant's Exhibit No. 10 shows all bonuses and rentals received by the appellant in connection with mineral leases which it executed covering the tract in question. Concerning the content of this exhibit, counsel for the State asked the following question to which the appellant objected in the following language:

"Q. Then pursuant to that lease, what is the amount that was received in the way of cash bonus?

"Mr. Jamison: We object to that question as calling for testimony that is incompetent, irrelevant, and immaterial, and not tending to prove or disprove any material issue in the case, since the income we have had from the property is in no way related to whether or not the Federal Land Bank, an instrumentality of the U. S. Government, is required to pay a personal property tax."

"Mr. Jamison: If the Court please, I don't see any relevancy to what our income was on a specific piece of property, how much we gained or how much we lost in that transaction, as having a bearing on our liability to pay a personal property tax. There is no relevancy or connection at all to it. If the Court lets this in they can go into the entire operation of the Federal Land Bank in this county, or we can as rebuttal, and ascertain how much we have gained or how much we have lost in salvage propositions on every piece of property in this county. Now, I anticipated what that would lead up to, and that is the reason that I objected to it. Now, this case is for an injunction against the county collecting tax on personal property owned by the Federal Land Bank, and it has nothing to do with the property to be sold, how much we got, or how much we lost.

"Now, I am at this time making a further objection to this testimony for the reason that the only person [fol. 19] who can challenge the rights of the Federal Land Bank ultra vires, or in excess of their powers, is the sovereign under which they received their charter, to-wit, the U. S. Government. They admit in their pleadings we received the charter; we are organized and existing under federal statute, and the law is clear that only the sovereign can challenge an ultra vires act, in excess of their corporate powers.

"I make the further objection at this time to the introduction of this evidence for the reason that any challenge that can be made by any sovereign or any other individual as to the act being ultra vires, or in excess of their corporate powers, must be made in a direct proceeding and not in a collateral attack, and this is a collateral proceeding."

Defendant's Exhibits 10, 10A and 10B which show income from the unit in question as cash bonus and rentals in the sum of $960.00 and royalty receipts of $2,017.20 from the sale of oil and gas were offered in evidence and admitted over appellant's objection.

The entire testimony of the witness was then admitted over appellant's objection as to irrelevancy or immateriality. The exhibits do not include internal expense of the bank or attorney's fees in connection with the handling of the foreclosure and sale of the unit. No breakdown can be made of the internal expense as applied to the particular tract.

The defense next called Richard Janson, who testified in substance, as follows: That he is the owner of the surface and an undivided one-half of the mineral rights in connection with the NE¼ Section 21-29-18; that he [fol. 20] bought it from the Federal Land Bank, and paid $3,500.00 therefor. Objections were sustained to further questions of the witness with reference to the dates when payments were made, the payment of taxes, and date witness acquired possession.

Counsel for the defense then offered to prove by the witness that he tried to purchase the mineral interest

from the appellant, the price offered, the amount of taxes he paid on the land, and the interest rate on his contract. This proffer was rejected by the court on objection interposed by counsel for the appellant.

The defense next offered to prove by Harold Herd, an attorney, that he had made several attempts to purchase the mineral interest in question from the appellant on behalf of Richard Janson, the price offered, and his success in purchasing the interest. The court sustained appellant's objection to this offer.

The witness, Richard Janson, was recalled to the stand and identified defendant's Exhibit 11 as deed from the Federal Land Bank to himself which was then offered and admitted in evidence.

The case was taken under advisement of the court and briefs submitted at the court's request. Defendants then requested that the court make separate findings of fact and legal conclusions. The requested findings and conclusions are not abstracted separately since they are substantially similar to those made by the court, except conclusion No. 9 which was added.

[fol. 21] The appellant then requested the following findings of fact and conclusions of law:

Plaintiff's Suggested Findings of Fact and Conclusions of Law

Findings of Fact

1. The plaintiff, The Federal Land Bank of Wichita, is a corporation duly organized and existing under and by virtue of Federal Statutes.

2. Plaintiff is an instrumentality of the Federal Government and entitled to tax immunities incidental thereto.

3. Plaintiff acquired the NE¼ of Section 21, Township 29 South, Range 18 West, Kiowa County, Kansas, pursuant to 12 U.S.C. 781, through foreclosure of a real estate mortgage executed in its favor by the then owners of said land to secure a loan of money made to said owners and which was delinquent at the time said foreclosure action was commenced.

4. On or about August 8, 1946, said plaintiff conveyed said land but excepted from said conveyance an undivided one-half interest in and to all the oil, gas and other minerals therein for a period of 20 years from and after May 25, 1943, and so long thereafter as oil, gas or other minerals were produced or the premises were being developed or operated.

5. The defendant, County of Kiowa, assessed certain personal property taxes against the interest of the plaintiff in an oil and gas well and on oil and gas produced from a drilling unit of which plaintiff's mineral reserve became a component part; said taxes were assessed for the year 1957, pursuant to G.S. 1949, 79-329 to 334.

6. This action was filed for the purpose of enjoining the collection of the tax so levied and assessed for the reason that the same is illegal, unconstitutional and void.

[fol. 22] *Conclusions of Law*

1. The plaintiff as an instrumentality of the Federal Government may not be taxed by any state or political subdivision thereof except as specifically permitted by Federal statutes.

2. The plaintiff, under 12 U.S.C. 931, is specifically exempt from state, municipal, and local taxation, except as to taxes on real estate held, purchased, or taken under the provisions of 12 U.S.C. 781.

3. No Federal statute has been enacted permitting the assessment by any taxing body of personal property taxes against the plaintiff.

4. The defendants may not challenge as ultra vires or in excess of its corporate powers acts of the plaintiff with respect to its mineral reserve herein involved.

5. Construction of the applicable Federal statutes with respect to the acquisition, disposition and taxing of property owned by the plaintiff is binding on this court.

6. Plaintiff is entitled to an injunction against the defendants, and each of them, as prayed for in its petition.

The court on July 10, 1959, prepared its findings and conclusions which are attached to and made part of the journal entry of judgment, except finding No. 8 which was added.

Appellant on July 17, 1959 filed a motion to vacate certain conclusions of law and to make additional findings of fact and legal conclusions, which reads:

[fol. 23]

MOTION OF PLAINTIFF TO VACATE CERTAIN CONCLUSIONS OF LAW AND TO MAKE ADDITIONAL FINDINGS OF FACT AND LEGAL CONCLUSIONS

Comes now the plaintiff in the above entitled case and moves the court for an order vacating, setting aside, and holding for naught certain conclusions of law heretofore made herein on July 10, 1959 and numbered 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 for the following reasons, to-wit:

1. That said conclusions are not supported by evidence produced at the trial of said cause.

2. That said conclusions are not supported by the findings of fact heretofore made herein.

3. That said conclusions are contrary to law and not supported by decisions or statutes.

Said plaintiff further requests that the court make additional findings of fact and conclusions of law as follows:

Findings of Fact

1. Plaintiff is an instrumentality of the Federal Government and is entitled to tax immunity incidental thereto.

2. That said immunity from taxation has not been waived by the Federal Government by any statute, regulation or decision as to taxes against plaintiff's personal property.

3. That the defendant, County of Kiowa, by and through its various agencies levied and assessed certain personal property taxes against the interests of the plaintiff in an

oil and gas well and on oil and gas produced from a drilling unit of which plaintiff's mineral reserve became a component part; said taxes were assessed for the year 1957, pursuant to G.S. 1949, 79-329 to 334.

[fol. 24] *Conclusions of Law*

1. The plaintiff, as an instrumentality of the Federal Government, may not be taxed by any state or political subdivision thereof unless its immunity therefrom has been specifically waived.

2. The plaintiff under 12 U.S.C. 931 is specifically exempt from state, municipal and local taxation, except as to taxes on real estate held, purchased or taken under the provisions of 12 U.S.C. 781.

3. No permission has been granted by the Federal Government by statute or regulation authorizing any state or political subdivision thereof to levy or assess personal property taxes against the plaintiff.

4. Defendants in this action may not challenge as ultra vires or in excess of its corporate powers acts of the plaintiff with respect to its mineral reserves herein involved.

5. Construction of the applicable Federal statutes with respect to acquisition, disposition and taxing of property owned by a Federal instrumentality is binding on this court.

6. Plaintiff is entitled to an injunction against the defendants, and each of them, as prayed for in its petition.

This motion was presented on October 7, 1959 and overruled by the court except paragraph 3 which was included in the court's findings as No. 8.

Thereafter and on the same day appellant filed its motion for a new trial, which by agreement of counsel was argued on the same day without prior service of copies on adverse counsel. The motion reads:

[fol. 25]

PLAINTIFF'S MOTION FOR NEW TRIAL AND OVERRULING THEREOF

Comes now the plaintiff in the above entitled case and moves the court for a new trial in said cause upon the following specified grounds:

1. Abuse of discretion of the trial court.

2. Erroneous rulings of the court.

3. The decision and judgment was rendered under the influence of passion or prejudice.

4. That the judgment and decision is wholly contrary to the evidence.

5. That the judgment and decision is wholly contrary to the law as applicable to the evidence.

6. That the court's findings of fact do not support the legal conclusions and judgment rendered herein.

Wherefore, said plaintiff prays that the decision and judgment heretofore rendered herein be vacated, set aside, and held for naught, and that it be granted a new trial in said cause.

The motion for a new trial was overruled by the court and judgment entered as of October 7, 1959.

JOURNAL ENTRY OF JUDGMENT—Entered October 7, 1959

Now on this 31st day of March, 1959, this cause comes on for trial. Plaintiff appears by and through its attorneys, Edward H. Jamison of Wichita, Kansas, and Steve W. Church of Greensburg, Kansas. The defendants, the Board of County Commissioners of the County of Kiowa; Ben H. Paxton, Sheriff; Alice Cronic, County Treasurer; and Eunice Rich, Clerk of the District Court, appear by and through their attorney Martin A. Aelmore, County [fol. 26] Attorney of Kiowa County. The defendant and intervener, the State of Kansas, appears by and through its attorneys, A. K. Stavely and Robert C. Londerholm, Assistant Attorneys General of the State of Kansas, of Topeka, Kansas.

Thereupon, trial is had to the Court, the Honorable Ernest M. Vieux sitting.

Thereupon, the plaintiff introduces its evidence and rests and defendants introduce their evidence and rest. The arguments of counsel being fully heard, the Court requests the submission by the parties of briefs and suggested findings of fact and conclusions of law.

Thereupon, and on the 10th day of July, 1959, the parties previously having submitted their briefs and suggested findings of fact and conclusions of law, the Court submits to the parties its findings of fact and conclusions of law.

Thereafter, on the 7th day of October, 1959, the parties heretofore mentioned present as before, plaintiff's motion to vacate certain of the Court's conclusions of law and to make additional findings of fact and legal conclusions is presented to the Court, and after hearing the arguments of counsel, the Court overrules this motion with the exception of paragraph 3 of the findings of fact requested in plaintiff's motion, which paragraph is ordered by the Court to be added to the Court's findings of fact as paragraph 8 thereof. The Court's findings of fact, as thus amended, and the Court's conclusions of law are thereupon entered in this cause as follows:

Findings of Fact

1. The Federal Land Bank of Wichita, plaintiff herein, is a corporation duly authorized and organized under an Act of Congress.

2. In 1922 plaintiff made a mortgage loan of $3000 upon the land involved in this case, being the Northeast quar- [fol. 27] ter of Section 21, Township 29, Range 18 in Kiowa County, Kansas. Said loan being in default in 1941 plaintiff commenced an action to foreclose said mortgage in the District Court of said County, being Case No. 4444 in said Court.

3. Thereafter on October 10, 1941, judgment was rendered in said action in favor of said bank and against the defendant owners of the sum of $3,306.79 with interest at

six percent, and for foreclosure of said mortgage and costs of suit. In due time an order of sale was issued and on November 24, 1941, plaintiff bid in said land at Sheriff's sale for the sum of $3,234.37, being the amount of the judgment, interest and costs, less a credit of $150.00 by cancellation of the stock issued in connection with said loan. Said sale was duly confirmed, and on May 25, 1943, plaintiff received a Sheriff's deed for said premises. During the running of the period of redemption, plaintiff paid no taxes or insurance on said property.

4. On January 1, 1943, the Farm Credit Administration promulgated the following regulation:

> "*Holding mineral rights for more than 5 years.* In cases where, in connection with a sale of bank-owned real estate,
>
> "the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both 'title and possession' of real estate within the meaning of section 13 (Fourth (b)) of the Federal Farm Loan Act (12 U.S.C. 781 (4) (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest, to do so, has the approval of the Administration." (Code of Federal Regulations, Title 6, Par. 10, 64.)

[fol. 28] On June 16, 1941, the plaintiff's Board of Directors had passed the following resolution:

> "Whereas, this Board has heretofore ratified and confirmed reservations by The Federal Land Bank of Wichita of minerals or mineral rights in connection with sales of its acquired real estate; and
>
> "Whereas, this Board feels that ordinarily it is to the best interests of the Bank to reserve an interest in minerals or mineral rights in connection with sales of its acquired real estate in order to realize as much as possible from such sales, and so retain

such minerals or mineral rights for such periods of time as it is deemed to be for the Bank's best interests,

"Now, Therefore, be it resolved that the Executive Committee of this Bank is hereby authorized and directed to reserve such interest in the minerals or mineral rights lying in, upon or under real estate sold by it as in the opinion of such Committee is deemed to be to the best interests of the Bank so to do, and to retain such minerals and mineral rights for such periods as may be permissible under the Farm Loan Act as amended, and the rules and regulations promulgated thereunder, and as in the opinion of such Committee are in the Bank's best interests."

5. In September, 1942, Richard P. Janson contracted to buy the land for $3,500 and he and his wife subsequently took title to the land by a special corporation warranty deed dated August 8, 1946, reciting a consideration of $3,500 wherein the Federal Land Bank reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May, 1943, and so long thereafter as minerals are produced on the premises or being developed or operated. In 1946, when plaintiff conveyed to Janson and reserved the one-half interest in the mineral estate, it had recouped its loss suffered by reason of the foreclosure of its mortgage on the real estate.

[fol. 29] 6. At the time plaintiff reserved the one-half mineral interest in the land there was no mineral production or immediate prospect thereof from the premises or from lands in the vicinity. The land is now unitised for oil and gas production purposes with the Northwest Quarter of Section 21, wherein lies the Pardoe gas well, the source of the gas and oil from which plaintiff's royalty interest is derived. The Pardoe well draws from the Nichols—Mississippian zone pool of gas which was first discovered in 1955.

7. On November 9, 1944, the plaintiff gave a ten year oil and gas lease to the property to V. C. Rouse. On June 3, 1955, the plaintiff granted the Gulf Oil Corporation a second oil and gas lease to the property. At the time of trial of the present case, plaintiff had derived $960.00 in rents and bonuses from these two leases and, in addition, $2,017.20 in royalties under the second lease. From 1947 through 1958, inclusive, plaintiff has paid a total of $33.15 in real property taxes upon its interest in the mineral estate.

8. That the defendant, County of Kiowa, by and through its various agencies levied and assessed certain personal property taxes against the interests of the plaintiff in an oil and gas well and on oil and gas produced from a drilling unit of which plaintiff's mineral reserve became a component part; said taxes were assessed for the year 1957, pursuant to G.S. 1949, 79-329 to 334.

CONCLUSIONS OF LAW

1. The Federal Land Bank of Wichita has only those powers granted it by the federal statutes under which it was created.

2. The Federal Land Bank of Wichita has no power, under the Federal Statutes, to speculate or make profits out of land taken by foreclosure.

[fol. 30] 3. The Federal Land Bank has no power, under Federal Statutes, to retain title to foreclosed real estate after such time as it has fully recouped its loss sustained by reason of the foreclosed mortgage transaction, and the retention of title in such circumstances is beyond the legal authority of the Bank.

4. The Federal Land Bank of Wichita holds title and possession of real property within the meaning of Title 12, United States Code, Par. 781(b), by virtue of its ownership of the mineral estate in Kiowa County.

5. The Farm Credit Administration has not lawfully granted the Federal Land Bank the special approval re-

quired by Title 12, United States Code, Par. 781 Fourth (b) for the Bank to hold title and possession of real property for a longer period than five years.

6. Congress, in enacting Title 12, United States Code, Par. 931, did not exempt from taxation property held by a federal land bank (1) in excess of its delegated powers, or (2) property held by the land bank in direct contravention of the time limitation imposed by Congress in Title 12, United States Code, Par. 781 Fourth (b).

7. The defendants in this case are entitled to raise the question of whether the Bank has exceeded or is in violation of its delegated powers as a defense to this action where the plaintiff attempts to avoid payment of taxes arising from property held without legal authority.

8. The Court will not lend its aid in the enforcement of a claim of exemption founded on illegality.

9. The holding of the property herein involved by plaintiff is not in exercise of a governmental function but is of the nature of a speculative investment after the governmental function with respect to the original mortgage investment has been accomplished.

10. Judgment should be entered in this case for defendants, with costs.

[fol. 31] 11. The injunction prayed for by the plaintiff is denied.

Plaintiff then presents its motion for a new trial and after hearing the arguments of counsel thereon, the motion is overruled and Court is adjourned.

It Is Therefore by the Court Considered, Ordered, Adjudged and Decreed, That the injunction prayed for by plaintiff is denied, that the plaintiff take nothing by this action and that the defendants recover their costs herein expended.

Ernest M. Vieux, Judge.

IN THE DISTRICT COURT OF KIOWA COUNTY, KANSAS
THE FEDERAL LAND BANK OF WICHITA,
Wichita, Kansas, a corporation, Plaintiff,

vs.

Supreme Court Case No. 42842
District Court Case No. 4895

BOARD OF COUNTY-COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE CRONIC, County Treasurer; and EUNICE RICH, Clerk of the District Court, Defendants,
THE STATE OF KANSAS, Intervener.

[fol. 32]

NOTICE OF APPEAL—Filed October 29, 1959

To: Board of County Commissioners of the County of Kiowa, State of Kansas; Ben H. Paxton, Sheriff; Alice Cronic, County Treasurer; and Eunice Rich, Clerk of the District Court;

The State of Kansas, Intervener; and their Attorneys of record.

You and each of you are hereby notified that the plaintiff, The Federal Land Bank of Wichita, Wichita, Kansas, a corporation, hereby appeals to the Supreme Court of the State of Kansas from each and every order, judgment and decree of the District Court of Kiowa County, Kansas, made and entered herein and particularly but without limitation from

1. The conclusions of law and each of them as found by said court.

2. The court's order overruling plaintiff's motion to vacate legal conclusions and to make additional findings of fact and legal conclusions.

3. The court's order and judgment rendered herein on October 7, 1959, denying the injunction against the defendants as prayed for by the plaintiff.

4. The court's order overruling said plaintiff's motion for a new trial.

All of which you will take due notice.

Dated this 13th day of October, 1959.

Steve W. Church, Greensburg, Kansas, Wm. G. Plested, Jr., Edw. H. Jamison, by Edw. H. Jamison, Wichita, Kansas, Attorneys for Plaintiff.

[fol. 33] Acknowledgments of service (omitted in printing).

Affidavits of service (omitted in printing).

[fol. 35]

Plaintiff's Exhibits

EXHIBIT No. 1.

Exhibit No. 1 is Petition in Case No. 444 in the District Court of Kiowa County, and in which the Federal Land Bank, as plaintiff, seeks foreclosure of its mortgage covering the NE¼ Section 21-29S-18W. George Noland, et al, are named as defendants.

EXHIBIT No. 2.

Exhibit No. 2 is journal entry of judgment in the action identified in Exhibit No. 1 entered on October 10, 1941 for the sum of $3,306.79, and for the foreclosure of plaintiff's mortgage against the tract securing it.

EXHIBIT No. 3.

Exhibit No. 3 is order of sale and sheriff's return showing sale of tract identified in Exhibit No. 1 to the Federal Land Bank on November 24, 1941 for $3,234.37.

[fol. 36] EXHIBIT No. 4.

Exhibit No. 4 is a certified copy of sheriff's deed in favor of the Federal Land Bank dated May 25, 1943 and recorded in Book 60 at Page 413, and conveying the tract described in Exhibit No. 1.

EXHIBIT No. 5.

Exhibit No. 5 is certified copy of resolution approved by the Board of Directors of the Federal Land Bank

authorizing it to retain mineral reserves for such periods as may be permissible under the Farm Loan Act as amended, and the rules and regulations promulgated thereunder. The complete resolution is set out in the journal entry of judgment.

Defendant's Exhibits

EXHIBIT No. 1.

Exhibit No. 1 is mortgage dated August 4, 1922 in the sum of $3,000.00 secured by the NE¼ Section 21-29S-18W, Kiowa County, Kansas, and executed by George Noland and wife in favor of the Federal Land Bank.

EXHIBIT No. 2.

Exhibit No. 2 is partial satisfaction of judgment entered in the foreclosure action herein identified as Case No. 4444. The judgment was credited by that instrument in the sum of $150.00, which was par value of the stock issued in connection with the mortgage.

[fol. 37] EXHIBIT No. 3.

Exhibit No. 3 is approval of Sheriff's sale of property in the action identified in Exhibit No. 2. The sale was made to the Federal Land Bank and approved on December 9, 1941.

EXHIBIT No. 4.

Exhibit No. 4 is a certificate of purchase executed by the sheriff to the Federal Land Bank in the case identified herein as No. 4444, and covering real property described in Exhibit No. 1.

EXHIBITS Nos. 10, 10A and 10B.

Exhibits Nos. 10, 10A and 10B are copies of the record from the Federal Land Bank showing receipt by it of $960.00 as bonus and rentals from leases on the mineral interest reserved by it in connection with the real property in question. These Exhibits also show receipt by

the Federal Land Bank of $2,017.20 as royalties paid in connection with such leases.

EXHIBIT No. 11.

Exhibit No. 11 is certified copy of deed from the Federal Land Bank to Richard P. and Beulah E. Janson recorded in Book 62 at Page 530, dated August 8, 1946, and conveying the NE¼ Section 21-29S-18W for the sum of $3,500.00. The deed reserves in grantor one-half of the oil, gas and other minerals for a period of twenty years from May 23, 1943, and as long thereafter as oil, gas, or other minerals are produced therefrom.

[fol. 38] CERTIFICATE.

We, the undersigned attorneys for the appellant, certify the foregoing to be a true and correct abstract of the record in the above entitled case.

Steve W. Church, Greensburg, Kansas, Wm. G. Plested, Jr., Edw. H. Jamison, Wichita, Kansas, Attorneys for Appellant.

SPECIFICATION OF ERRORS.

The trial court erred:

I.

In admitting incompetent evidence offered on behalf of the defendants over the objection of plaintiff.

II.

In making conclusions of law which are not warranted nor supported by the evidence nor the findings of fact.

III.

In failing and refusing to make findings of fact supported by competent evidence and legal conclusions supported by such findings as requested by plaintiff.

IV.

In overruling plaintiff's motion to vacate certain erroneous conclusions of law and in failing and refusing to make additional findings of fact supported by the evidence and additional legal conclusions based thereon.

[fol. 39] V.

In overruling plaintiff's motion for a new trial.

VI.

In entering judgment for the defendants and against the plaintiff denying it the injunction prayed for in its petition.

[fol. 40] [File endorsement omitted]

[fol. 41]

IN THE SUPREME COURT

OF THE STATE OF KANSAS

THE FEDERAL LAND BANK OF WICHITA, a Corporation of Wichita, Kansas, Appellant,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE CRONIC, County Treasurer; and EUNICE RICH, Clerk of the District Court; THE STATE OF KANSAS, Intervener, Appellees.

No. 41,842

Appellees' Counter Abstract—Filed February 10, 1960

The following is testimony of appellees' witnesses and an extract from the argument on the motion for a new trial.

H. A. Beverlin Testified:

The records of the Conservation Division, Kansas Corporation Commission, Wichita, Kansas, of which I have custody indicate that the discovery (first) gas well of the Nichols Field was brought in on March 2, 1955.

Richard Janson Testified:

There was no mineral production on the land when I purchased it nor when I took a deed of conveyance to it in 1946.

[fol. 42] Paul A. Buser Testified:

The Federal Land Bank received royalty payments under an oil and gas lease with the Gulf Oil Corporation. The first payment under this lease was made December 3, 1956, and the total of such royalty payments received after that date until the time of trial is $2,017.20. The Bank received cash bonuses and lease income from leasing the property in question in the total amount of $960.

The following stipulation was entered into:

"Mr. Londerholm: Your Honor, at this time the plaintiff and defendants will stipulate that the figure $33.15 represents the ad valorem property tax paid by the Federal Land Bank to the county on the undivided one-half interest in the mineral estate for the years 1947 through 1958, inclusive; that figure of $33.15 being a total for that period of time, 11 years. Is that agreeable?"

"Mr. Jamison: That's right; that's our record. I'm not admitting it is competent, but I admit that has been paid."

(Mr. Buser): The Bank has not paid any other property tax on the property from and after May 25, 1943, and it has had no insurance payments.

Cross examination.

By Mr. Jamison:

"Q. Mr. Buser, you have given the income of this property shown by your ledger and the income from the lease,

the production. Now those payments do not include the internal expense of the Federal Land Bank in connection with the handling of this action, attorneys' fees, and all other expenses in connection with the foreclosure of this, from the time foreclosure was started until the property was sold. Those figures do not include those expenses. Is that right?"

A. That's right.

[fol. 43] Q. You do not have any way of breaking down these expenses as applied to this particular property?

A. I do not.

Q. You have no opinion at this time as to the amount of these expenses?

A. I have no idea.

Redirect.

Q. Your records do not disclose any attorney's fees having been paid?

A. No.

Q. So we have no evidence on that point whatsoever.

A. No.

Richard Janson Testified:

I acquired the land in question in 1943 from the Federal Land Bank under a contract of purchase for a consideration of $3,500. It was a payment contract and I paid interest on the unpaid balance at the rate of 4½%.

ARGUMENT IN SUPPORT OF MOTION FOR NEW TRIAL

The Court: Well, Mr. Jamison, don't you understand that the Court has to be as concerned about the local government as he is with the United States Government?

Mr. Jamison: I do, if the Court please.

The Court: Other than the ruling which the Court has made after hearing arguments and reading the briefs of the parties, and hearing the evidence presented at the trial of this matter, have you a basis for saying the Court was prejudiced against your client?

Mr. Jamison: Now here is my point, exactly: Our government is and must be a government of laws and not of men. The law is clear on this point. We are a federal in-
[fol. 44] strumentality. The law is clear on the point that a federal instrumentality is immune from taxation, unless that immunity is specifically waived. I furnished all that law to the Court. Now the law is on our side and it is, in my opinion, absolutely clear. There are no decisions against it. Now we get an adverse decision.—

The Court: Now, I asked you the question, Do you have any other reason other than that the Court has ruled against you for your stating the Court was prejudiced against your client?

Mr. Jamison: My position is this, if the Court please: If the law is absolutely clear that we are a government instrumentality and that we cannot be taxed unless that immunity is waived, and there is no showing that there is any waiver, if that law is clear, and it is clear and comes down from the Federal Court, and the rulings of the Federal Court on the interpretation of their statutes are for the direction of this Court, then the Court goes out and makes a finding that, in my opinion, is contrary to law, and it has been brought across to the Court time and time and time again, and no contrary authorities have ever been furnished to the effect that we are not entitled to judgment in this case, then, as I said, I can't conclude otherwise than that the Court is prejudiced. I don't know why the Court should be prejudiced against the Federal Land Bank. It is cooperative in character; has no outstanding stock, except the farmer-borrowers; if there is any profit made it is all returned to the farmer-borrowers, and I don't know why the Court should be prejudiced against my client. But what other conclusion can I arrive at, if I am right about the law.

The Court: Then you are saying that you don't have any other reason for basing it on other than that the Court has ruled against you; is that it?

[fol. 45] Mr. Jamison: Oh, yes, I do. Oh, yes, I do. My basis for making that statement that I think the Court is prejudiced is that there is no law against us, and the Court follows the law.

The Court: You are a lawyer admitted to practice before the Court, Mr. Jamison, and you realize that there are controversies of all kinds before the Court?

Mr. Jamison: Yes, sir, I do.

The Court: And there are different theories presented to the Court?

Mr. Jamison: Yes.

The Court: But the fact alone that the Court rules against you, you conclude that the Court is prejudiced against your client or has other reasons other than what was presented in Court?

Mr. Jamison: Well, how can I conclude otherwise, if the Court please, if the law is all on our side?

CERTIFICATE

I do hereby certify the foregoing counter abstract to be a true and correct abstract of certain portions of the record in the above entitled cause so far as necessary for review of the questions raised by the Specifications of Error by appellant and by this appeal.

Respectfully submitted,

Robert C. Londerholm, Assistant Attorney General.

[fol. 47].

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 41,842

THE FEDERAL LAND BANK OF WICHITA, a Corporation of Wichita, Kansas, Appellant,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE CRONIC, County Treasurer; and EUNICE RICH, Clerk of the District Court; THE STATE OF KANSAS, Intervener, Appellees.

Syllabus by the Court

1. Taxation—Doctrine of Implied Immunity and Its Limitations. As between the state and federal governments the doctrine of implied immunity from taxation has its inherent limitations. The doctrine is aimed at the protection of operations of government and does not extend to those matters which are beyond functions essentially governmental in character. A government may not depart from functions essentially governmental in character and enter into fields of business inherently private in their nature and yet demand protection from taxation behind a shield of implied immunity.

2. Same—Exemption Strictly Construed—Burden of Proof. It is universally held that taxation is the rule and exemption is the exception, and that language relied upon as creating an exemption from taxation must be strictly construed. Where one claims immunity from the common burdens of taxation which rest equally upon all, the burden is upon him to establish clearly that he is entitled to the exemption.

3. Same—Federal Land Bank—Action to Enjoin Tax—Exemption. The Federal Land Bank of Wichita (a federal instrumentality) made a loan on real estate. The loan became in default and the bank foreclosed its mortgage and in due time became the owner of the property by virtue of a sheriff's deed. Later, it sold the property, and, in so doing, reserved a mineral interest. At the time of sale the bank had fully recouped its financial loss arising out of the loan and foreclosure of the mortgage. The bank gave oil and gas leases covering the mineral interest retained by it and, upon production being had, received rents, bonuses and royalties therefrom. The county, through its taxing officials, levied and assessed a personal property tax against the bank's interest in the leases. The bank brought an action to enjoin the levy and collection of the tax, claiming that it was exempt. The record is examined and considered and, all as fully set forth in the opinion, it is *held* that under the facts of record the bank has no valid claim for exemption from the tax in question and injunctive relief was properly denied.

Appeal from Kiowa district court; Ernest M. Vieux, judge. Opinion filed August 4, 1960. Affirmed.

Edw. H. Jamison, of Wichita, argued the cause, and Steve W. Church, of Greensburg, and Wm. G. Plested, Jr., of Wichita, were with him on the brief for the appellant.

Robert C. Londerholm, Assistant Attorney General, argued the cause, and John Anderson, Jr., Attorney General, A. K. Stavely, Assistant Attorney General and Mar-
[fol. 48] tin A. Aelmore, County Attorney, were with him on the brief for the appellees.

OPINION—Filed August 4, 1960

The opinion of the court was delivered by

Price, J.: The question in this case is whether, under the facts of record, certain personal property consisting of a royalty interest derived from an oil and gas lease owned by the Federal Land Bank of Wichita, a federal

instrumentality (hereafter referred to as the bank), is subject to taxation by the state or a political subdivision thereof.

The trial court held that it is subject to personal property tax, and the bank has appealed.

The background of the matter is this:

In 1922 the bank made a loan of $3,000 and as security therefor took a mortgage on the quarter section of land in Kiowa county here involved. In 1941 the loan became in default and the bank brought a foreclosure action. On October 10, 1941, judgment was rendered in favor of the bank against the owners in the amount of $3,306.79, with interest at six per cent, and a decree of foreclosure was entered foreclosing the mortgage and awarding costs of suit to the bank. In due time an order of sale was issued, and on November 24, 1941, the bank bid in the land at sheriff's sale for the sum of $3,324.37, such sum being the amount of the judgment, interest and costs, less a credit of $150 arising from a cancellation of the stock issued in connection with the loan. The sale was duly confirmed, and on May 25, 1943, the bank received a sheriff's deed to the premises. During the running of the period of redemption the bank paid no taxes or insurance on the property.

In September, 1942, Richard P. Janson, the present owner of the land, contracted to buy it for $3,500, and under this contract he paid the interest on the unpaid principal balance. On August 8, 1946, the bank conveyed the property to him by a warranty deed for a total consideration of $3,500. In the deed of conveyance to Janson the bank reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May, 1943, and for so long thereafter as minerals are produced on the premises or are being developed or operated. As of the date of conveyance there was no mineral production or prospect thereof from the premises or from land in that vicinity.

It also is to be noted that at the time the bank conveyed the land in question to Janson, reserving the mineral [fol. 49] estate, it had fully recouped its financial loss suffered by reason of foreclosure of its mortgage.

In 1955 a pool of gas was discovered and production of oil and gas was begun, and the land in question is now unitized for oil and gas production purposes with an adjoining quarter section wherein is located a gas well, the source of the oil and gas from which the bank's royalty interest, here sought to be taxed, is derived.

On November 9, 1944, the bank gave a ten-year oil and gas lease to the property, and again on June 3, 1955, the bank granted another oil and gas lease covering it. As of the date of trial of this action, in the spring of 1959, the bank had derived $960 in rents and bonuses from the two leases, and $2,017.20 in royalties under the second lease. During the period from 1947 through 1958 the bank paid a total of $33.15 in real property taxes upon its interest in the mineral estate.

In 1957 Kiowa county, by and through its taxing officials, levied and assessed a personal property tax in the amount of $46.81 against the interest of the bank in the oil and gas lease and upon the royalty interest derived therefrom for that year. This tax was levied pursuant to the provisions of G. S. 1949, 79-329 to 79-334, which, among other things, provide that for the purpose of valuation and taxation oil and gas leases are declared to be personal property and shall be assessed and taxed as such to the owner thereof.

On August 29, 1958, the bank, under the provisions of G. S. 1949, 60-1121, brought this action to enjoin the levy and collection of the tax, alleging that it is wholly exempt by law from payment of any and all taxes, federal, state, municipal and local, except such taxes as may lawfully be levied and assessed against it upon real estate held, purchased or lawfully acquired by it, as provided by Title 12, U. S. C. A. § 931.

The attorney general, on behalf of the state, was permitted to intervene as a party defendant, and, among other things, the answers of defendants alleged that the bank's authority is strictly circumscribed by the federal statutes under which it was created and exists; that the primary function of the bank is to provide a rural credit system by which credit should be extended to persons engaged in agriculture; that in enacting Title 12, U. S.

C. A., § 931, congress did not intend to and did not exempt from taxation personal property acquired or held by a federal land bank in excess of its statutory powers, nor is such personal property impliedly exempted from [fol. 50] taxation by the federal constitution; that the bank has no power or authority, either express or implied, to enter upon and continue original speculative enterprises and to hold real property interests over protracted periods of time for the purpose of speculating in future profits, rents or royalties that might be obtained from mineral production thereon, and that the written regulation of the Farm Credit Administration, upon which the bank relies for its authority to hold the property in question beyond a period of five years, is wholly void and of no effect.

Upon the issues thus joined the parties proceeded to trial. In denying the injunction sought by the bank and in rendering judgment for defendants and holding the property to be subject to personal property tax, the trial court made findings of fact. Although repetitious in some respects of what already has been related of the factual background, we nevertheless quote them in full:

"1. The Federal Land Bank of Wichita, plaintiff herein, is a corporation duly authorized and organized under an Act of Congress.

"2. In 1922 plaintiff made a mortgage loan of $3000 upon the the land involved in this case, being the Northeast quarter of Section 21, Township 29, Range 18 in Kiowa County, Kansas. Said loan being in default in 1941 plaintiff commenced an action to foreclose said mortgage in the District Court of said County, being Case No. 4444 in said Court.

"3. Thereafter on October 10, 1941, judgment was rendered in said action in favor of said bank and against the defendant owners of the sum of $3,306.79 with interest at six percent, and for foreclosure of said mortgage and costs of suit. In due time an order of sale was issued and on November 24, 1941, plaintiff bid in said land at Sheriff's sale for the sum of $3,234.37, being the amount of the

judgment, interest and costs, less a credit of $150.00 by cancellation of the stock issued in connection with said loan. Said sale was duly confirmed, and on May 25, 1943, plaintiff received a Sheriff's deed for said premises. During the running of the period of redemption, plaintiff paid no taxes or insurance on said property.

"4. On January 1, 1943, the Farm Credit Administration promulgated the following regulation:

> "'*Holding mineral rights for more than 5 years.* In cases where, in connection with a sale of bank-owned real estate,
>
> "'the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both "title and possession" of real estate within the meaning of section 13 (Fourth [b]) of the Federal Farm Loan Act (12 U. S. C. 781 [4] [b]). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the banker's opinion it is in the bank's interest to do so, has the approval of the Administration.' (Code of Federal Regulations, Title 6, Par. 10.64.)

[fol. 51] "On June 16, 1941, the plaintiff's Board of Directors had passed the following resolution:

> "'Whereas, this Board has heretofore ratified and confirmed reservations by The Federal Land Bank of Wichita of minerals or mineral rights in connection with sales of its acquired real estate; and
>
> "'Whereas, this Board feels that ordinarily it is to the best interests of the Bank to reserve an interest in minerals or mineral rights in connection with sales of its acquired real estate in order to realize as much as possible from such sales, and so retain such minerals or mineral rights for such periods of time as it is deemed to be for the Bank's best interests,
>
> "'Now, Therefore, be it resolved that the Executive Committee of this Bank is hereby authorized and

directed to reserve such interest in the minerals or mineral rights lying in, upon or under real estate sold by it as in the opinion of such Committee is deemed to be to the best interests of the Bank so to do, and to retain such minerals and mineral rights for such periods as may be permissible under the Farm Loan Act as amended, and the rules and regulations promulgated thereunder, and as in the opinion of such Committee are in the Bank's best interests.'

"5. In September, 1942, Richard P. Janson contracted to buy the land for $3,500 and he and his wife subsequently took title to the land by a special corporation warranty deed dated August 8, 1946, reciting a consideration of $3,500 wherein the Federal Land Bank reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May, 1943, and so long thereafter as minerals are produced on the premises or being developed or operated. In 1946, when plaintiff conveyed to Janson and reserved the one-half interest in the mineral estate, it had recouped its loss suffered by reason of the foreclosure of its mortgage on the real estate.

"6. At the time plaintiff reserved the one-half mineral interest in the land there was no mineral production or immediate prospect thereof from the premises or from lands in the vicinity. The land is now unitised for oil and gas production purposes with the Northwest Quarter of Section 21, wherein lies the Pardoe gas well, the source of the gas and oil from which plaintiff's royalty interest is derived. The Pardoe well draws from the Nichols-Mississippian zone pool of gas which was first discovered in 1955.

"7. On November 9, 1944, the plaintiff gave a ten year oil and gas lease to the property to V. C. Rouse. On June 3, 1955, the plaintiff granted the Gulf Oil Corporation a second oil and gas lease to the property. At the time of trial of the present case, plaintiff had derived $960.00 in rents and bonuses from these two leases and, in addition, $2,017.20 in royalties under the second lease. From 1947 through 1958, inclusive, plaintiff has paid a total of

$33.15 in real property taxes upon its interest in the mineral estate.

"8. That the defendant, County of Kiowa, by and through its various agencies levied and assessed certain personal property taxes against the interests of the plaintiff in an oil and gas well and on oil and gas produced from a drilling unit of which plaintiff's mineral reserve became a component part; said taxes were assessed for the year 1957, pursuant to G. S. 1949, 79-329 to 334."

[fol. 52] For its conclusions of law the trial court held:

"1. The Federal Land Bank of Wichita has only those powers granted it by the federal statutes under which it was created.

"2. The Federal Land Bank of Wichita has no power, under the Federal Statutes, to speculate or make profits out of land taken by foreclosure.

"3. The Federal Land Bank has no power, under Federal Statutes, to retain title to foreclosed real estate after such time as it has fully recouped its loss sustained by reason of the foreclosed mortgage transaction, and the retention of title in such circumstances is beyond the legal authority of the Bank.

"4. The Federal Land Bank of Wichita holds title and possession of real property within the meaning of Title 12, United States Code, Par. 781(b), by virtue of its ownership of the mineral estate in Kiowa County.

"5. The Farm Credit Administration has not lawfully granted the Federal Land Bank the special approval required by Title 12, United States Code, Par. 781 Fourth (b) for the Bank to hold title and possession of real property for a longer period than five years.

"6. Congress, in enacting Title 12, United States Code, Par. 931, did not exempt from taxation property held by a federal land bank (1) in excess of its delegated powers, or (2) property held by the land bank in direct contravention of the time limitation imposed by Congress in Title 12, United States Code, Par. 781 Fourth (b).

"7. The defendants in this case are entitled to raise the question of whether the Bank has exceeded or is in violation of its delegated powers as a defense to this action where the plaintiff attempts to avoid payment of taxes arising from property held without legal authority.

"8. The Court will not lend its aid in the enforcement of a claim of exemption founded on illegality.

"9. The holding of the property herein involved by plaintiff is not in exercise of a governmental function but is of the nature of a speculative investment after the governmental function with respect to the original mortgage investment has been accomplished.

"10. Judgment should be entered in this case for defendants, with costs.

"11. The injunction prayed for by the plaintiff is denied."

In this court the bank makes no complaint concerning the trial court's findings of fact and does not contend they are not supported by the evidence. It is contended, however, that they do not support the judgment rendered. Specifically, it is argued (1) that the bank, being an instrumentality of the federal government, is immune from state, local and municipal taxation (*M'Culloch* v. *State of Maryland*, 4 Wheat. 316, 4 L. Ed. 579, and the many related decisions); (2) the bank, being a federal instrumentality is, as such, exempt from payment of personal property tax; (3) federal statutes and the construction thereof by federal courts are binding on state courts; (4) acts of the bank may not be challenged as [fol. 53] ultra vires by these defendants, and (5) the bank may lawfully reserve and retain mineral interests.

Insofar as here material, Title 12, U. S. C. A., § 781, referred to in conclusions of law 4, 5 and 6, above, reads:

"Every Federal land bank shall have power, subject to the limitations and requirements of this subchapter—. . . .

"Fourth. . . .

"To acquire and dispose of— . . .

"(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing. Every such bank may carry real estate as an asset, for a period of not exceeding five years, at its normal value but not to exceed the amount of the bank's investment therein at the time of acquirement of such real estate."

Insofar as here material, Title 12, U. S. C. A., § 931, which is referred to in conclusion of law 6, above, reads:

"Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of sections 761 and 781 of this title. . . ."

From conclusions of law 4, 5 and 6, it is apparent the trial court was of the opinion the bank holds title and possession of real property within the meaning of § 781, above, by virtue of its ownership of the mineral estate in question; that the Farm Credit Administration by its regulation, found at 6 CFR, § 10.64 (set out in finding of fact 4, above), had not lawfully granted to the bank the "special approval" required by § 781 for the bank to hold title and possession of real property for a period longer than five years, and that the Congress, in enacting § 931, above, did not exempt from taxation property held by a federal land bank in excess of its delegated powers or in direct contravention of the time limitation imposed by § 781.

There is much to be said for the proposition that the quoted regulation (6 CFR, § 10.64) of the Farm Credit Administration is in reality an invalid attempt by that body to delegate to the various federal land banks the

discretion to determine whether to hold property for more than five years—that is, the regulation purports to permit such holding "when in the bank's opinion it is in the bank's interest to do so," whereas the Congress, in § 781, [fol. 54] has expressly provided that such time limit may not be exceeded without the "special approval" of the Farm Credit Administration—thus lending support to the correctness of the trial court's ruling that the retention of the mineral interest by the bank is illegal and unlawful and therefore cannot be the basis of a claim of exemption from taxation.

Entirely aside from what has just been said relating to the purported delegation by the Farm Credit Administration to federal land bank of the discretion to determine whether to hold property for more than the five-year period notwithstanding that the Congress, by enacting § 781, has said that such cannot be done without the "special approval" of the Farm Credit Administration, it would appear from an examination of other sections of the federal act creating federal land banks that the only reasonable construction of that portion of § 781 authorizing a federal land bank to hold beyond five years, and of 6 CFR, § 10.64, is that inherently such provisions have reference only to those instances where retention of mineral interests would aid the bank in recouping its loss arising out of ownership of land as a result of its prior loan and foreclosure—in other words, it is logical to conclude that the provisions in question are limited to the furtherance of the governmental function for which the bank was created.

We think, however, there are even stronger and more compelling reasons why the trial court's judgment denying the bank's claim of exemption was correct and should be upheld.

We are concerned here with a tax only on personal property (G. S. 1949, 79-329 to 334, above). The fact of the matter is—and it is not contended otherwise—the bank had been made whole and had fully recouped any loss it may have sustained resulting from the foreclosure. The record contains no evidence that the bank retained the mineral interest in question in an effort to recoup any

losses it may have incurred arising out of other loans or bank-held properties—and no contention is made with respect to that. For all the record shows, the mineral interest was retained merely as a "speculative investment" after the governmental function with respect to the original mortgage investment had been accomplished —just as was held by the trial court in its conclusion of law 9, above.

The case of *Clinton* v. *State Tax Commission,* 146 Kan. 407, 71 P. 2d 857, presented the question whether the compensation received by a woman as a clerk and stenographer [fol. 55] for four federal agencies (one of which was the Federal Land Bank of Wichita) was taxable under our state income-tax law. Concededly, the question was not the same as we have here, but the opinion contains an exhaustive and comprehensive review and discussion of many federal cases dealing with the subject of the immunity from state taxation of instrumentalities of the federal government, beginning with the historic landmark case of *M'Culloch* v. *State of Maryland*, above. In the interest of brevity we will not burden this opinion with quotations from the Clinton case, but we summarize a number of statements and rules found in that opinion, all of which are supported by federal authorities:

The doctrine of implied immunity from taxation is a necessary development of our dual system of state and federal government and must be given a practical construction which permits both governments to function with the minimum interference each with the other, and that limitation cannot be so varied or extended as seriously to impair taxing powers of the government imposing the tax or the appropriate exercise of the functions of government affected by it. . . . The doctrine has its inherent limitations and is aimed at the protection of operations of government, and does not extend to anything lying outside or beyond functions essentially governmental in character. It does not exist where no direct burden is laid upon the governmental instrumentality. . . . The doctrine of implied immunity from taxation must be given a practical and not a mechanical construction. At some point

the interference becomes too remote to warrant an application of the immunity which has been implied from the sovereign nature of the federal government. When that point is reached the power of the state prevails. Neither government may destroy the other nor curtail in any substantial manner the exercise of its powers. . . . Where the immunity exists it is absolute, resting upon an entire absence of power, but it does not exist where no direct burden is laid upon the governmental instrumentality and where there is only a remote, if any, influence upon the exercise of the functions of government. . . . It has long been held that unless a tax actually hinders or interferes with the efficient exercise of the purposes sought to be accomplished, the doctrine of implied immunity does not apply—that is to say, it is restricted to the protection of functions essentially governmental in character, and, when the particular tax does not violate the reasoning underlying the principle of immunity, namely, the protection [fol. 56] of functions of government—the rule fails. . . . A government may not depart from functions essentially governmental in character and enter into fields of business inherently private in their nature and yet demand protection from taxation behind a shield of implied immunity.

See, also, *Boeing Airplane Co.* v. *Commission of Revenue and Taxation,* 153 Kan. 712, 716, 717, 719, 113 P. 2d 110.

In *M.-K.-T. Rld. Co.* v. *State Tax Commission,* 150 Kan. 614, 616, 95 P. 2d 293 (1939), it was said that it must be kept in mind that both federal and state courts in recent years have come to view claims to exemption from the common burden of taxation much more strictly than formerly, and it is universally held that taxation is the rule and exemption is the exception, and that a party claiming an exemption must prove all facts necessary to show that he is entitled thereto. (*Clinton* v. *State Tax Commission,* above, syl. 5; *Clements* v. *Ljungdahl,* 161 Kan. 274, 167 P. 2d 603; *Defenders of the Christian Faith, Inc.* v. *Horn,* 174 Kan. 40, 44, 254 P. 2d 830; *Midwest Solvents Co.* v. *State Comm. of Rev. & Taxation,* 183 Kan. 104, 108, 325 P. 2d 511; *Kansas State Teachers Ass'n* v. *Cushman,* 186 Kan. 489, 501, 351 P. 2d 19.)

Application of the rules and principles stated in the Clinton case to the facts before us can lead to but one result.

One of the primary functions of the bank is to extend credit to persons engaged in agriculture and to make loans on the security of real-estate mortgages. The acquisition and holding of real estate is a mere incident to its money-lending functions and is authorized only when it is a necessary incident to those functions. § 781, above, by its very terms, provides that the bank has the power to acquire and dispose of parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees or mortgages held by it. When the bank, in 1946, retained the mineral interest in question it had absolutely no further financial interest to protect with respect to the property and the loan previously made thereon. Any loss which may have been incurred had been fully recouped. There remained no further federal governmental purpose to be served by retention of the mineral interest. There is nothing in the act authorizing a federal land bank to hold or acquire property interests for profit or speculation. We believe that the Congress, in enacting the exemption provision in § 931, above, intended that the tax immunity there provided should apply only when the bank is engaged in [fol. 57] the furtherance of its governmental function. Under the facts before us, how does the imposition of this personal property tax impede or interfere with the legitimate function of the federal instrumentality involved? It does not—and when the reason for the rule of tax immunity, namely, the protection of functions of government —fails—the rule fails.

No reason has been shown why the state and county should be denied the right to tax the property here involved which is not being held and used in furtherance of a federal purpose. The judgment of the trial court denying to the bank the injunctive relief sought was correct and is affirmed.

[fol. 58] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 41,842

[Title omitted]

MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR REHEARING—Filed August 9, 1960

Comes now The Federal Land Bank of Wichita, a corporation, Wichita, Kansas, appellant in the above entitled case, by and through its attorney, Donald J. Robinson, and moves the court for an order granting the appellant twenty (20) days from August 15, 1960, to file with the court a Motion for Rehearing for the following reason, to-wit:

> Edw. H. Jamison of Wichita, Kansas, the attorney who argued the cause, and Wm. G. Plested, Jr., General Counsel and President of the appellant corporation, who was with Mr. Jamison on the brief, are both absent from the State of Kansas at this time and will not return to the State until Monday, August 15, 1960.

Donald J. Robinson, Attorney for Appellant.

Duly sworn to by Donald J. Robinson, jurat omitted in printing.

[fol. 59]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 41,842

[Title omitted]

ORDER ALLOWING MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR REHEARING—August 9, 1960

Now comes on for decision the motion of the appellant for additional time to file motion for rehearing of this cause and thereupon, after due consideration by the court, it is ordered that said motion be allowed.

[fol. 60] Petition for rehearing covering 20 pages filed August 31, 1960 omitted from this print.

It was denied, and nothing more by order October 5, 1960.

[fol. 61]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 41,842

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—October 5, 1960

Now comes on for decision the motion of the appellant for a rehearing of this cause and thereupon, after due consideration by the court, it is ordered that said motion be denied.

[fol. 63] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 64]

SUPREME COURT OF THE UNITED STATES

No. 614, October Term, 1960

FEDERAL LAND BANK OF WICHITA, Petitioner,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, et al.

ORDER ALLOWING CERTIORARI—March 20, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Kansas is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No. 735

THE FEDERAL LAND BANK OF WICHITA, Wichita, Kansas, a Corporation,
Petitioner,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE CRONIC, County Treasurer; EUNICE RICH, Clerk of the District Court; and THE STATE OF KANSAS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS.

WM. G. PLESTED, JR.,
EDW. H. JAMISON,
Wichita 1, Kansas,
Attorneys for Petitioner.

R. L. MERRIHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3030

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CITATIONS

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No. .....

THE FEDERAL LAND BANK OF WICHITA,
Wichita, Kansas, a Corporation,
Petitioner,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE CRONIC, County Treasurer; EUNICE RICH, Clerk of the District Court; and THE STATE OF KANSAS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS.

Petitioner, The Federal Land Bank of Wichita, prays that a writ of certiorari issue to review the decision of the Supreme Court of the State of Kansas in this case.

OPINION BELOW.

The opinion of the Supreme Court of the State of Kansas (App. A, *infra*, pp. A1-A16), which includes findings of fact and conclusions of law of the trial court, is reported at 187 Kan. 148, 354 P.2d 679.

JURISDICTION.

The opinion of the Kansas Supreme Court was filed August 4, 1960 (R. (3); App. A, *infra*, p. A2). Rule 16 of the Kansas Supreme Court authorizes the filing of a motion for rehearing within twenty days after the decision. A motion for twenty days additional time within which to file a motion for rehearing was filed by petitioner on August 9, 1960 (R. (4)) and allowed on the same date (R. (5)). Motion for rehearing was filed August 31, 1960 (R. (6)) and denied October 5, 1960 (R. (7)). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 since the opinion of the Kansas Supreme Court upheld a tax under State law on the personal property of a Federal land bank notwithstanding the laws of the United States provide that the personal property of a Federal land bank shall be exempt from State and local taxation.

QUESTION PRESENTED.

Whether, in view of § 26 of the Federal Farm Loan Act of July 17, 1916 (c. 245, 39 Stat. 360, 380; 12 U.S.C. §§ 931-933; App. B, *infra*, p. A18), which, among other things, directs "That every Federal land bank * * * shall be exempt from Federal, State, municipal, and local taxation, except taxes on real estate * * *", The Federal Land Bank of Wichita, petitioner herein, is subject to a personal

property tax imposed under the General Statutes of Kansas (G.S. 1949, §§ 79-329-331, App. B, *infra*, p. A17) on the royalty interest of the land bank in an oil and gas lease granted by the bank on mineral interests owned by it, in addition to real property taxes imposed upon the mineral interests.

STATUTES AND REGULATION INVOLVED.

Sections 79-329-331, General Statutes of Kansas 1949, §§ 26 and 13 Fourth of the Federal Farm Loan Act of July 17, 1916, as amended (12 U.S.C. §§ 931-933, 781 Fourth), and 6 CFR § 10.64, a regulation issued by the Farm Credit Administration, are set forth in Appendix B, *infra*, pp. A17-A19.

STATEMENT.

The Federal Land Bank of Wichita, petitioner herein, is one of the 12 Federal land banks established in 1917 under the terms of the Federal Farm Loan Act (c. 245, 39 Stat. 360, 12 U.S.C. § 641 *et seq.*). The administration of that Act (§ 1, 39 Stat. 360, as amended, 12 U.S.C. § 641) and the general supervision of such land banks (§ 17 (i), 39 Stat. 375, as amended, 12 U.S.C. § 831 (i)) is under the Farm Credit Administration, an independent agency in the executive branch of the Government (67 Stat. 390, 12 U.S.C. § 636b). The district served by the petitioner includes the States of Kansas, Oklahoma, Colorado, and New Mexico. The main activity of such banks is to make long-term farm mortgage loans to farmers and ranchers, through their local Federal land bank associations, at the lowest possible interest rates consistent with the cost of money to the banks which is obtained by selling bonds to

the public. The authority of Congress to create the Federal land banks and authorize their activities was sustained in *Smith* v. *Kansas City Title & Trust Co.*, 255 U.S. 180.

In the course of its regular farm mortgage business, after default on one of the loans made by it in Kiowa County, Kansas, petitioner acquired a tract of farmland which had been mortgaged as security. Upon selling the tract, petitioner reserved an undivided one-half mineral interest. Upon this retained mineral interest, petitioner has paid real property taxes. Petitioner later granted an oil and gas lease on this mineral interest. Subsequently, a gas well was drilled and certain royalty payments have been made to petitioner in connection with the gas produced under said lease. (App. A, *infra*, pp. A2).

Under the General Statutes of Kansas (G. S. 1949, §§ 79-329-331, App. B, *infra*, p. A17), "all oil and gas leases * * * are hereby declared to be personal property and shall be assessed and taxed as such" and "such portion of the valuation of the oil or gas wells as represents the lessor's interest, or royalty interest, therein shall be assessed to the owner thereof and the remaining portion or working interest therein shall be assessed to the owner of the lease". Under such State law, the County of Kiowa in Kansas levied a personal property tax on the royalty interest of petitioner in the aforesaid oil and gas lease. Petitioner then filed this action in the District Court of Kiowa County, Kansas, for the purpose of securing a permanent injunction against the various county officials restaining and enjoining the collection of the tax (R. (1), 2-7), in which action the State of Kansas intervened (R. (1), 9). Such relief was sought on the ground that a Federal land bank is exempt from State and local personal property taxes under § 26 of the Federal Farm Loan

Act (c. 245, 39 Stat. 360, 380; 12 U.S.C. §§ 931-933; App. B, *infra*, p. A18), which, among other things, directs "That every Federal land bank * * * shall be exempt from Federal, State, municipal and local taxation, except taxes upon real estate * * *". The trial court denied the injunction prayed for (R. (1), 31) and such denial was affirmed by the Supreme Court of the State of Kansas (App. A, *infra*, p. A16), which also denied petitioner's motion for rehearing (R. (7)).

REASONS FOR GRANTING THE WRIT.

1. The decision of the Kansas Supreme Court is in conflict with the relevant decisions of this Court. Section 26 of the Federal Farm Loan Act (c. 245, 39 Stat. 360, 380; 12 U.S.C. §§ 931-933; App. B, *infra*, p. A18) directs "That every Federal land bank * * * shall be exempt from Federal, State, municipal and local taxation except taxes upon real estate * * *". The exemption clearly extends to a State or local personal property tax on personal property of a Federal land bank and precludes the tax assessed against the petitioner in this case. In *Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.*, 314 U.S. 95, which involved a State sales tax on lumber and other building materials purchased by a Federal land bank to effect necessary repairs and improvements to buildings on properties acquired through foreclosure proceedings, this Court stated and answered the questions presented as follows (p. 99): "We are confronted with two questions: *First*—Does § 26 include within its ban a state sales tax such as this? We hold that it does. *Second*—Can Congress constitutionally immunize from state taxation activities in furtherance of the lending functions of federal land banks? We hold that it can." In affirming the action of the trial court in denying injunctive relief against the County of

Kiowa collecting a personal property tax on personal property of the petitioner, a Federal land bank, the Kansas Supreme Court refused to recognize the Federal statutory exemption of a Federal land bank from State and local personal property tax. As stated in *Federal Land Bank of New Orleans* v. *Crosland,* 261 U.S. 374, which held that mortgages executed to a Federal land bank are not subject to a State recording tax, such a Federal statutory tax exemption "must prevail over any inconsistent laws of a State" (p. 377). The Federal statutory tax exemption granted farm loan bonds issued by the Federal land banks has also been sustained as within the authority of Congress. *Smith* v. *Kansas City Title & Trust Co.,* 255 U.S. 180.

The opinion of the Kansas Supreme Court acknowledges that (App. A, *infra,* p. A13) "We are concerned here with a tax only on personal property * * *." However, the opinion then asserts that the exemption from State and local personal property taxes granted to a Federal land bank by Congress "should apply only when the bank is engaged in the furtherance of its governmental function" and that the royalty and mineral interests held by the petitioner "are not being held and used in furtherance of a federal purpose" because any loss which may have been incurred in the particular transaction had been fully recouped (App. A, *infra,* p. A13). How and on what authority the petitioner holds the personal property involved, and its use, is not subject to inquiry by the County of Kiowa and is not deemed material to the question presented. However, among the enumerated powers of a Federal land bank is the following (§ 13 Fourth, 39 Stat. 372, as amended, 12 U.S.C. § 781 Fourth; App. B, *infra,* p. A19):

"Fourth. To acquire and dispose of—

"(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

"(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing * * *."

The foregoing authority for acquiring and disposing of property is considered to embrace the mineral interests, oil and gas leases, and royalty interests therein held by the petitioner. As to such property held for a longer period than five years, the special approval of the Farm Credit Administration in writing, if required, has been published in the Federal Register (21 F.R. 8646) and included in the Code of Federal Regulations (6 CFR § 10.64) and is as follows (App. B, *infra*, p. A19):

"Mineral Rights.

"§ 1064 *Holding mineral rights for more than 5 years.* In cases where, in connection with a sale of bank-owned real estate, the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both 'title and possession' of real estate within the meaning of section 13 Fourth (b) of the Federal Farm Loan Act (12 U.S.C. 781 Fourth (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest to do so, has the approval of the (Farm Credit) Administration."

The basis on which the Kansas Supreme Court reached its decision has the effect of writing into the Federal statutory tax exemption a qualification contrary to its terms because all of the personal property of a Federal land bank has been exempted by Congress from State and local taxation without any distinction between different types of personal property or the use which is made of it. There is no authority for the County of Kiowa to collect a personal property tax on a royalty interest of the petitioner on the claim that its ownership is not a "governmental function" or a "federal purpose". As remarked in the *Bismarck* case (p. 103), "Congress has authority to prescribe tax immunity for activities connected with, or in furtherance of, the lending functions of federal credit agencies". Whether a particular immunity is wise, is a question solely for Congress to determine. Supervisory authority over the Federal land banks is expressly granted by Congress to the Farm Credit Administration (§ 17 (i), 39 Stat. 375, as amended, 12 U.S.C. 831 (i)) and such authority certainly does not lie with state administrative bodies or state courts. There is no precedent for the opinion below and such opinion is in conflict with the decisions of this Court and should be reversed.

2. The question presented is of substantial and continuing importance. The immediate case involves only a State or local personal property tax on a royalty interest in an oil and gas lease of mineral interests in a single tract in Kiowa County, Kansas. However, the petitioner has mineral leases outstanding on over 283,000 acres on which there are approximately 580 producing wells; the total acreage under lease for the 12 Federal land banks is over 1,300,000 acres on which it is estimated that there are approximately 1200 producing wells.[1] If the decision of

1. Information supplied by the Farm Credit Administration.

the Kansas Supreme Court is not reversed, other royalty interests of the petitioner, not only in Kiowa County but in all the counties in Kansas, will be subject to the same tax involved in this action. It is to be expected, too, that taxing authorities throughout the country may and probably will take steps to collect personal property taxes from petitioner and the other 11 Federal land banks. If permitted to stand, the decision of the Kansas Supreme Court will also cloud the title and authority of the Federal land banks to hold mineral interests notwithstanding the holding of such interests was approved by the Farm Credit Administration (R. (1) 27, 4) in accordance with the Federal Farm Loan Act. In 31 of the States the Federal land banks hold mineral interests in over 9,900,000 acres[2].

3. Further, if the decision of the Kansas Supreme Court is permitted to stand, it would reach beyond the Federal land banks. It would mean that notwithstanding a Federal statutory tax exemption against State and local taxation of an instrumentality of the United States, State and local authorities nonetheless have discretion to tax the instrumentality if in their view the tax relates to property which, though covered by the terms of the Federal exemption, is not being used in furtherance of a Federal or governmental purpose in the view of such State or local authorities. Any such theory is in derogation of and in conflict with the authority of Congress to prescribe the extent to which State and local authorities may tax a Federal instrumentality which Congress has seen fit to create.

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2. Information supplied by Farm Credit Administration.

CONCLUSION.

It is respectfully submitted that this petition for a writ of certiorari should be granted.

WM. G. PLESTED, JR.,
EDW. H. JAMISON,
Attorneys for Petitioner.

December, 1960.

APPENDIX A

No. 41,842

THE FEDERAL LAND BANK OF WICHITA, a Corporation of Wichita, Kansas, *Appellant*,

v.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE CRONIC, County Treasurer; and EUNICE RICH, Clerk of the District Court; THE STATE OF KANSAS, Intervener, *Appellees*.

Syllabus by the Court

1.

As between the state and federal governments the doctrine of implied immunity from taxation has its inherent limitations. The doctrine is aimed at the protection of operations of government and does not extend to those matters which are beyond functions essentially governmental in character. A government may not depart from functions essentially governmental in character and enter into fields of business inherently private in their nature and yet demand protection from taxation behind a shield of implied immunity.

2.

It is universally held that taxation is the rule and exemption is the exception, and that language relied upon as creating an exemption from taxation must be strictly construed. Where one claims immunity from the common burdens of taxation which rest equally upon all, the burden

is upon him to establish clearly that he is entitled to the exemption.

3.

The Federal Land Bank of Wichita (a federal instrumentality) made a loan on real estate. The loan became in default and the bank foreclosed its mortgage and in due time became the owner of the property by virtue of a sheriff's deed. Later, it sold the property, and, in so doing, reserved a mineral interest. At the time of sale the bank had fully recouped its financial loss arising out of the loan and foreclosure of the mortgage. The bank gave oil and gas leases covering the mineral interest retained by it and, upon production being had, received rents, bonuses and royalties therefrom. The county, through its taxing officals, levied and assessed a personal property tax against the bank's interest in the leases. The bank brought an action to enjoin the levy and collection of the tax, claiming that it was exempt. The record is examined and considered and, all as fully set forth in the opinion, it is *held* that under the facts of record the bank has no valid claim for exemption from the tax in question and injunctive relief was properly denied.

Appeal from Kiowa district court; ERNEST M. VIEUX, judge. Opinion filed August 4, 1960. Affirmed.

Edw. H. Jamison, of Wichita, argued the cause, and *Steve W. Church*, of Greensburg, and *Wm. G. Plested, Jr.*, of Wichita, were with him on the brief for the appellant.

Robert C. Londerholm, Assistant Attorney General, argued the cause, and *John Anderson, Jr.*, Attorney General, *A. K. Stavely*, Assistant Attorney General, and *Martin A. Aelmore*, County Attorney, were with him on the brief for the appellees.

The opinion of the court was delivered by

PRICE, J.: The question in this case is whether, under the facts of record, certain personal property consisting of a royalty interest derived from an oil and gas lease owned by the Federal Land Bank of Wichita, a federal instrumentality (hereafter referred to as the bank), is subject to taxation by the state or a political subdivision thereof.

The trial court held that it is subject to personal property tax and the bank has appealed.

The background of the matter is this:

In 1922 the bank made a loan of $3,000 and as security therefor took a mortgage on the quarter section of land in Kiowa county here involved. In 1941 the loan became in default and the bank brought a foreclosure action. On October 10, 1941, judgment was rendered in favor of the bank against the owners in the amount of $3,306.79, with interest at six per cent, and a decree of foreclosure was entered foreclosing the mortgage and awarding costs of suit to the bank. In due time an order of sale was issued, and on November 24, 1941, the bank bid in the land at sheriff's sale for the sum of $3,234.37, such sum being the amount of the judgment, interest and costs, less a credit of $150 arising from a cancellation of the stock issued in connection with the loan. The sale was duly confirmed, and on May 25, 1943, the bank received a sheriff's deed to the premises. During the running of the period of redemption the bank paid no taxes or insurance on the property.

In September, 1942, Richard P. Janson, the present owner of the land, contracted to buy it for $3,500, and under this contract he paid the interest on the unpaid principal balance. On August 8, 1946, the bank conveyed the prop-

erty to him by a warranty deed for a total consideration of $3,500. In the deed of conveyance to Janson the bank reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May, 1943, and for so long thereafter as minerals are produced on the premises or are being developed or operated. As of the date of conveyance there was no mineral production or prospect thereof from the premises or from land in that vicinity.

It also is to be noted that at the time the bank conveyed the land in question to Janson, reserving the mineral estate, it had fully recouped its financial loss suffered by reason of foreclosure of its mortgage.

In 1955 a pool of gas was discovered and production of oil and gas was begun, and the land in question is now unitized for oil and gas production purposes with an adjoining quarter section wherein is located a gas well, the source of the oil and gas from which the bank's royalty interest, here sought to be taxed, is derived.

On November 9, 1944, the bank gave a ten-year oil and gas lease to the property, and again on June 3, 1955, the bank granted another oil and gas lease covering it. As of the date of trial of this action, in the spring of 1959, the bank had derived $960 in rents and bonuses from the two leases, and $2,017.20 in royalties under the second lease. During the period from 1947 through 1958 the bank paid a total of $33.15 in real property taxes upon its interest in the mineral estate.

In 1957 Kiowa county, by and through its taxing officials, levied and assessed a personal property tax in the amount of $46.81 against the interest of the bank in the oil and gas lease and upon the royalty interest derived therefrom for that year. This tax was levied pursuant to

the provisions of G.S. 1949, 79-329 to 79-334, which, among other things, provide that for the purpose of valuation and taxation oil and gas leases are declared to be personal property and shall be assessed and taxed as such to the owner thereof.

On August 29, 1959, the bank, under the provisions of G.S. 1949, 60-1121, brought this action to enjoin the levy and collection of the tax, alleging that it is wholly exempt by law from payment of any and all taxes, federal, state, municipal and local, except such taxes as may lawfully be levied and assessed against it upon real estate held, purchased or lawfully acquired by it, as provided by Title 12, U.S.C.A. §931.

The attorney general, on behalf of the state, was permitted to intervene as a party defendant, and, among other things, the answers of defendants alleged that the bank's authority is strictly circumscribed by the federal statutes under which it was created and exists; that the primary function of the bank is to provide a rural credit system by which credit should be extended to persons engaged in agriculture; that in enacting Title 12, U.S.C.A. §931, Congress did not intend to and did not exempt from taxation personal property acquired or held by a federal land bank in excess of its statutory powers, nor is such personal property impliedly exempted from taxation by the Federal Constitution; that the bank has no power or authority, either express or implied, to enter upon and continue original speculative enterprises and to hold real property interests over protracted periods of time for the purpose of speculating in future profits, rents or royalties that might be obtained from mineral production thereon, and that the written regulation of the Farm Credit Administration, upon which the bank relies for

its authority to hold the property in question beyond a period of five years, is wholly void and of no effect.

Upon the issues thus joined the parties proceeded to trial. In denying the injunction sought by the bank and in rendering judgment for defendants and holding the property to be subject to personal property tax, the trial court made findings of fact. Although repetitious in some respects of what already has been related of the factual background, we nevertheless quote them in full:

> "1. The Federal Land Bank of Wichita, plaintiff herein, is a corporation duly authorized and organized under an Act of Congress.
>
> "2. In 1922 plaintiff made a mortgage loan of $3,000 upon the land involved in this case, being the Northeast quarter of Section 21, Township 29, Range 18, in Kiowa County, Kansas. Said loan being in default in 1941 plaintiff commenced an action to foreclose said mortgage in the District Court of said County, being Case No. 4444 in said Court.
>
> "3. Thereafter on October 10, 1941, judgment was rendered in said action in favor of said bank and against the defendant owners of the sum of $3,306.79 with interest at six per cent, and for foreclosure of said mortgage and costs of suit. In due time an order of sale was issued and on November 24, 1941, plaintiff bid in said land at Sheriff's sale for the sum of $3,234.37, being the amount of the judgment, interest and costs, less a credit of $150.00 by cancellation of the stock issued in connection with said loan. Said sale was duly confirmed, and on May 25, 1943, plaintiff received a Sheriff's deed for said premises. During the running of the period of redemption, plaintiff paid no taxes or insurance on said property.
>
> "4. On January 1, 1943, the Farm Credit Administration promulgated the following regulation:

"'*Holding mineral rights for more than 5 years.* In cases where, in connection with a sale of bank-owned real estate, "the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both 'title and possession' of real estate within the meaning of section 13 (Fourth (b)) of the Federal Farm Loan Act (12 U.S.C. 781 (4) (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest to do so, has the approval of the Administration." (Code of Federal Regulations, Title 6, Par. 10.64).'

"On June 16, 1941, the plaintiffs' Board of Directors had passed the following resolution:

"'WHEREAS, this Board has heretofore ratified and confirmed reservations by The Federal Land Bank of Wichita of minerals or mineral rights in connection with sales of its acquired real estate; and

"'WHEREAS, this Board feels that ordinarily it is to the best interests of the Bank to reserve an interest in minerals or mineral rights in connection with sales of its acquired real estate in order to realize as much as possible from such sales, and so retain such minerals or mineral rights for such periods of time as it is deemed to be for the Bank's best interests,

"'NOW, THEREFORE, be it resolved that the Executive Committee of this Bank is hereby authorized and directed to reserve such interest in the minerals or mineral rights lying in, upon or under real estate sold by it as in the opinion of such Committee is deemed to be to the best interests of the Bank so to do, and to retain such minerals and mineral rights for such periods as may be permissible under the Farm Loan Act as amended, and the rules and regulations promulgated thereunder, and

as in the opinion of such Committee are in the Bank's best interests.'

"5. In September, 1942, Richard P. Janson contracted to buy the land for $3,500 and he and his wife subsequently took title to the land by a special corporation warranty deed dated August 8, 1946, reciting consideration of $3,500 wherein the Federal Land Bank reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May, 1943, and so long thereafter as minerals are produced on the premises or being developed or operated. In 1946, when plaintiff conveyed to Janson and reserved the one-half interest in the mineral estate, it had recouped its loss suffered by reason of the foreclosure of its mortgage on the real estate.

"6. At the time plaintiff reserved the one-half mineral interest in the land there was no mineral production or immediate prospect thereof from the premises or from lands in the vicinity. The land is now unitized for oil and gas production purposes with the Northwest Quarter of Section 21, wherein lies the Pardoe gas well, the source of the gas and oil from which plaintiff's royalty interest is derived. The Pardoe well draws from the Nichols-Mississippian zone pool of gas which was first discovered in 1955.

"7. On November 9, 1944, the plaintiff gave a ten year oil and gas lease to the property to V. C. Rouse. On June 3, 1955, the plaintiff granted the Gulf Oil Corporation a second oil and gas lease to the property. At the time of trial of the present case, plaintiff had derived $960.00 in rents and bonuses from these two leases and, in addition, $2,017.20 in royalties under the second lease. From 1947 through 1958, inclusive, plaintiff has paid a total of $33.15 in real property taxes upon its interest in the mineral estate.

"8. That the defendant, County of Kiowa, by and through its various agencies levied and assessed

certain personal property taxes against the interests of the plaintiff in an oil and gas well and in oil and gas produced from a drilling unit of which plaintiff's mineral reserve became a component part; said taxes were assessed for the year 1957, pursuant to G.S. 1949, 79-329 to 334."

For its conclusions of law the trial court held:

"1. The Federal Land Bank of Wichita has only those powers granted it by the federal statutes under which it was created.

"2. The Federal Land Bank of Wichita has no power, under the Federal Statutes, to speculate or make profits out of land taken by foreclosure.

"3. The Federal Land Bank has no power, under Federal Statutes, to retain title to foreclosed real estate after such time as it has fully recouped its loss sustained by reason of the foreclosed mortgage transaction, and the retention of title in such circumstances is beyond the legal authority of the Bank.

"4. The Federal Land Bank of Wichita holds title and possession of real property within the meaning of Title 12, United States Code, Par. 781 (b), by virtue of its ownership of the mineral estate in Kiowa County.

"5. The Farm Credit Administration has not lawfully granted the Federal Land Bank the special approval required by Title 12, United States Code, Par. 781 Fourth (b) for the Bank to hold title and possession of real property for a longer period than five years.

"6. Congress, in enacting Title 12, United States Code, Par. 931, did not exempt from taxation property held by a federal land bank (1) in excess of its delegated powers, or (2) property held by the land bank in direct contravention of the time limitation imposed by Congress in Title 12, United States Code, Par. 781 Fourth (b).

"7. The defendants in this case are entitled to raise the question of whether the Bank has exceeded or is in violation of its delegated powers as a defense to this action where the plaintiff attempts to avoid payment of taxes arising from property held without legal authority.

"8. The Court will not lend its aid in the enforcement of a claim of exemption founded on illegality.

"9. The holding of the property herein involved by plaintiff is not in exercise of a governmental function but is of the nature of a speculative investment after the governmental function with respect to the original mortgage investment has been accomplished.

"10. Judgment should be entered in this case for defendants, with costs.

"11. The injunction prayed for by the plaintiff is denied."

In this court the bank makes no complaint concerning the trial court's findings of fact and does not contend they are not supported by the evidence. It is contended, however, that they do not support the judgment rendered. Specifically, it is argued (1) that the bank, being an instrumentality of the federal government, is immune from state, local and municipal taxation (*M'Culloch* v. *State of Maryland*, 4 Wheat. 316, 4 L. Ed. 579, and the many related decisions); (2) the bank, being a federal instrumentality is, as such, exempt from payment of personal property tax; (3) federal statutes and the construction thereof by federal courts are binding on state courts; (4) acts of the bank may not be challenged as *ultra vires* by these defendants, and (5) the bank may lawfully reserve and retain mineral interests.

Insofar as here material, Title 12, U.S.C.A., §781, referred to in conclusions of law 4, 5 and 6, above, reads:

"Every Federal land bank shall have power, subject to the limitations and requirements of this subchapter—* * *

"Fourth * * *.

"To acquire and dispose of— * * *

"(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing. Every such bank may carry real estate as an asset, for a period of not exceeding five years, at its normal value but not to exceed the amount of the bank's investment therein at the time of acquirement of such real estate."

Insofar as here material, Title 12, U.S.C.A., §931, which is referred to in conclusion of law 6, above, reads:

"Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of sections 761 and 781 of this title. * * *"

From conclusions of law 4, 5 and 6, it is apparent the trial court was of the opinion the bank holds title and possession of real property within the meaning of §781, above, by virtue of its ownership of the mineral estate in question; that the Farm Credit Administration by its regulation, found at 6 CFR, §10.64 (set out in finding of fact 4, above), had not lawfully granted to the bank the "special approval" required by §781 for the bank to hold title and possession of real property for a period longer than five

years, and that the Congress, in enacting §931, above, did not exempt from taxation property held by a federal land bank in excess of its delegated powers or in direct contravention of the time limitation imposed by §781.

There is much to be said for the proposition that the quoted regulation (6 CFR, §10.64) of the Farm Credit Administration is in reality an invalid attempt by that body to delegate to the various federal land banks the discretion to determine whether to hold property for more than five years—that is, the regulation purports to permit such holding "when in the bank's opinion it is in the bank's interest to do so", whereas the Congress, in §781, has expressly provided that such time limit may not be exceeded without the "special approval" of the Farm Credit Administration—thus lending support to the correctness of the trial court's ruling that the retention of the mineral interest by the bank is illegal and unlawful and therefore cannot be the basis of a claim of exemption from taxation.

Entirely aside from what has just been said relating to the purported delegation by the Farm Credit Administration to federal land banks of the discretion to determine whether to hold property for more than the five-year period notwithstanding that the Congress, by enacting §781, has said that such cannot be done without the "special approval" of the Farm Credit Administration, it would appear from an examination of other sections of the federal act creating federal land banks that the only reasonable construction of that portion of §781 authorizing a federal land bank to hold beyond five years, and of 6 CFR, §10.64, is that inherently such provisions have reference only to those instances where retention of mineral interests would aid the bank in recouping its loss arising out of ownership of land as a result of its prior loan and foreclosure—in other

words, it is logical to conclude that the provisions in question are limited to the furtherance of the governmental function for which the bank was created.

We think, however, there are even stronger and more compelling reasons why the trial court's judgment denying the bank's claim of exemption was correct and should be upheld.

We are concerned here with a tax only on personal property (G.S. 1949, 79-329 to 334, above). The fact of the matter is—and it is not contended otherwise—the bank had been made whole and had fully recouped any loss it may have sustained resulting from the foreclosure. The record contains no evidence that the bank retained the mineral interest in question in an effort to recoup any losses it may have incurred arising out of other loans or bank-held properties—and no contention is made with respect to that. For all the record shows, the mineral interest was retained merely as a "speculative investment" after the governmental function with respect to the original mortgage investment had been accomplished—just as was held by the trial court in its conclusion of law 9, above.

The case of *Clinton* v. *State Tax Commission*, 146 Kan. 407, 71 P.2d 857, presented the question whether the compensation received by a woman as a clerk and stenographer for four federal agencies (one of which was the Fedeal Land Bank of Wichita) was taxable under our state income-tax law. Concededly, the question was not the same as we have here, but the opinion contains an exhaustive and comprehensive review and discussion of many federal cases dealing with the subject of the immunity from state taxation of instrumentalities of the federal government, beginning with the historic landmark case of *M'Culloch* v. *State of Maryland*, above. In the interest of brevity we

will not burden this opinion with quotations from the Clinton case, but we summarize a number of statements and rules found in that opinion, all of which are supported by federal authorities:

The doctrine of implied immunity from taxation is a necessary development of our dual system of state and federal government and must be given a practical construction which permits both governments to function with the minimum of interference each with the other, and that limitation cannot be so varied or extended as seriously to impair taxing powers of the government imposing the tax or the appropriate exercise of the functions of government affected by it. * * * The doctrine has its inherent limitations and is aimed at the protection of operations of government, and does not extend to anything lying outside or beyond functions essentially governmental in character. It does not exist where no direct burden is laid upon the governmental instrumentality. * * * The doctrine of implied immunity from taxation must be given a practical and not a mechanical construction. At some point the interference becomes too remote to warrant an application of the immunity which has been implied from the sovereign nature of the federal government. When that point is reached the power of the state prevails. Neither government may destroy the other nor curtail in any substantial manner the exercise of its powers. * * * Where the immunity exists it is absolute, resting upon an entire absence of power, but it does not exist where no direct burden is laid upon the governmental instrumentality and where there is only a remote, if any, influence upon the exercise of the functions of government. * * * It has long been held that unless a tax actually hinders or interferes with the efficient exercise of the purposes sought to be accomplished, the doctrine of implied immunity does not apply—that is to say, it is re-

stricted to the protection of functions essentially governmental in character, and, when the particular tax does not violate the reasoning underlying the principle of immunity, namely, the protection of functions of government—the rule fails. * * * A government may not depart from functions essentially governmental in character and enter into fields of business inherently private in their nature and yet demand protection from taxation behind a shield of implied immunity.

See also, *Boeing Airplane Co.* v. *Commission of Revenue and Taxation*, 153 Kan. 712, 716, 717, 718, 719, 113 P.2d 110.

In *M.-K.-T. Rld. Co.* v. *State Tax Commission*, 150 Kan. 614, 616, 95 P.2d 293 (1939), it was said that it must be kept in mind that both federal and state courts in recent years have come to view claims to exemption from the common burden of taxation much more strictly than formerly, and it is universally held that taxation is the rule and exemption is the exception, and that a party claiming an exemption must prove all facts necessary to show that he is entitled thereto (*Clinton* v. *State Tax Commission*, above, syl. 5; *Clements* v. *Ljungdahl*, 161 Kan. 274, 167 P.2d 603; *Defenders of the Christian Faith, Inc.*, v. *Horn*, 174 Kan. 40, 44, 254 P.2d 830; *Midwest Solvents Co.* v. *State Comm. of Rev. & Taxation*, 183 Kan. 104, 108, 325 P.2d 511; *Kansas State Teachers Ass'n* v. *Cushman*, 186 Kan. 489, 501, 351 P.2d 19).

Application of the rules and principles stated in the Clinton case to the facts before us can lead to but one result.

One of the primary functions of the bank is to extend credit to persons engaged in agriculture and to make loans on the security of real-estate mortgages. The acquisi-

tion and holding of real estate is a mere incident to its money-lending functions and is authorized only when it is a necessary incident to those functions. §781, above, by its very terms, provides that the bank has the power to acquire and dispose of parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees or mortgages held by it. When the bank, in 1946, retained the mineral interest in question it had absolutely no further financial interest to protect with respect to the property and the loan previously made thereon. Any loss which may have been incurred had been fully recouped. There remained no further federal governmental purpose to be served by retention of the mineral interest. There is nothing in the act authorizing a federal land bank to hold or acquire property interests for profit or speculation. We believe that the Congress, in enacting the exemption provision in §931, above, intended that the tax immunity there provided should apply only when the bank is engaged in the furtherance of its governmental function. Under the facts before us, how does the imposition of this personal property tax impede or interfere with the legitimate function of the federal instrumentality involved? It does not—and when the reason for the rule of tax immunity, namely, the protection of functions of government—fails—the rule fails.

No reason has been shown why the state and county should be denied the right to tax the property here involved which is not being held and used in furtherance of a federal purpose. The judgment of the trial court denying to the bank the injunctive relief sought was correct and is affirmed.

APPENDIX B.

General Statutes of Kansas 1949:

79-329. Oil and gas property as personalty. That for the purpose of valuation and taxation, all oil and gas leases and all oil and gas wells, producing or capable of producing oil or gas in paying quantities, together with all casing, tubing or other material therein, and all other equipment and material used in operating the oil or gas wells are hereby declared to be personal property and shall be assessed and taxed as such.

79-330. Same; valuation. That in valuing for taxation, oil or gas properties consisting of one or more leases and oil or gas wells, there shall, in addition to the value of all oil—or gas-well material in or upon the leasehold properties, be made such valuation of the oil or gas wells as would make a reasonable and fair value of the whole property: Provided, That such portion of the valuation of the oil or gas wells as represents the lessor's interest, or royalty interest, therein shall be assessed to the owner thereof and the remaining portion or working interest therein shall be assessed to the owner of the lease, together with the other property assessed in connection therewith.

79-331. Same; how value determined. That in determining the value of oil and gas wells or properties the assessor shall take into consideration the age of the wells, the quality of oil or gas being produced therefrom, the nearness of the wells to market, the cost of operation, the character, extent and permanency of the market, the probable life of the wells, the quantity of oil or gas produced from the wells, the number of wells being operated, and such other

facts as may be known by the assessor to affect the value of the property.

Federal Farm Loan Act, July 17, 1916:

Section 26, 39 Stat. 380:

12 U.S.C., § 931: Every Federal land bank and every Federal land bank association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of sections 761 and 781 of this title. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

12 U.S.C., § 932: Nothing in sections 931-933 of this title shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section 548 of this title with reference to the shares of national banking associations.

12 U.S.C., § 933: Nothing in sections 931-933 of this title shall be construed to exempt the real property of Federal and joint stock land banks and Federal land bank associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

Section 13, 39 Stat. 372:

12 U.S.C. 781 Fourth (a) and (b): Every Federal land bank shall have power, subject to the limitations and requirements of this subchapter—

Fourth. Acquiring and disposing of property.—To acquire and dispose of—

(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing.

Farm Credit Administration Regulation:

6 CFR, § 10.64: Holding mineral rights for more than 5 years. In cases where, in connection with a sale of bank-owned real estate, the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both "title and possession" of real estate within the meaning of section 13 Fourth (b) of the Federal Farm Loan Act (12 U.S.C. 781 Fourth (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest to do so, has the approval of the Administration.

No. 635

In the Supreme Court of the United States

OCTOBER TERM, 1960

THE FEDERAL LAND BANK OF WICHITA, PETITIONER

v.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

J. LEE RANKIN,
Solicitor General,
CHARLES K. RICE,
Assistant Attorney General,
I. HENRY KUTZ,
DAVID O. WALTER,
Attorneys,
Department of Justice, Washington 25, D.C.

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 614

THE FEDERAL LAND BANK OF WICHITA, PETITIONER

v.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

Pursuant to Rule 42(4) of the Rules of this Court, the Solicitor General, on behalf of the United States, files this memorandum as *amicus curiae,* and urges that the petition for a writ of certiorari in this case be granted.

In the course of its regular farm mortgage business, after default on one of its loans secured by a mortgage, the petitioner Bank acquired by foreclosure title to a tract of land in Kiowa County, Kansas. Upon selling the tract, the Bank reserved an undivided one-half mineral interest therein. It later granted oil and gas leases covering the property. During the years 1947 through 1948, the Bank paid real

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estate taxes on its interest in the mineral estate as such.

In 1957, Kiowa County levied and assessed a personal property tax against the interest of the Bank in the oil and gas lease and upon the royalty interest derived therefrom. This tax was levied pursuant to the provisions of General Statutes of Kansas, Sections 79–329 to 79–334, which, as the court below held (187 Kan. 148, 354 P. 2d 679, 681), provide that, for the purpose of valuation and taxation, oil and gas leases are declared to be personal property and shall be assessed and taxed as such to the owner thereof. The Bank brought this action in the District Court of Kiowa County, Kansas to enjoin the levy and collection of the tax on the ground that the bank is exempt from the payment of all taxes, except real estate taxes. The Bank relied on Section 26, Federal Farm Loan Act, c. 245, 39 Stat. 360, 380 (12 U.S.C. 931–933), which directs "That every Federal land bank * * * shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate * * *." The trial court denied the injunction and the Supreme Court of Kansas affirmed that denial. In upholding the tax, that court stated that the statutory exemption "should apply only when the bank is engaged in the furtherance of its governmental function", and that the holding of royalty and mineral rights by a Federal Land Bank is not in furtherance of a federal purpose.

The decision below disregards the principle set out by this Court in *Federal Land Bank* v. *Bismarck Co.*, 314 U.S. 95, 102:

> The argument that the lending functions of the federal land banks are proprietary rather than governmental misconceives the nature of the federal government with respect to every function which it performs. The federal government is one of delegated powers, and from that it necessarily follows that any constitutional exercise of its delegated powers is governmental. *Graves* v. *New York ex rel. O'Keefe,* 306 U.S. 466, 477. It also follows that, when Congress constitutionally creates a corporation through which the federal government lawfully acts, the activities of such corporation are governmental. *Pittman* v. *Home Owners' Loan Corp.,* 308 U.S. 21, 32; *Graves* v. *New York ex rel. O'Keefe, supra,* 477.

See, also, *Mayo* v. *United States,* 319 U.S. 441, 444. The opinion below repeats an argument presented, but rejected, in *Smith* v. *Kansas City Title Co.,* 255 U.S. 180, 181–192.

The court below construed the Bank's enabling statute as not "authorizing a federal land bank to hold or acquire property interests for profit or speculation." This Court, however, in *Federal Land Bank* v. *Priddy,* 295 U.S. 229, 233, construed the statute otherwise, stating that "The operations of the federal land banks are, in part at least, for profit," and "they may acquire and dispose of property in their own right, including land." Nevertheless, it pointed out (p. 235) that—

> There is thus a specific grant of immunity from taxation, to a corporation having its own purposes as well as those of the United States, and interested in profits on its own account * * *.

The decision below also is in conflict with the decisions of this Court repeatedly sustaining the principle that it is for Congress to determine the extent to which federal instrumentalities shall be exempt from taxes. *Smith* v. *Kansas City Title Co.*, 255 U.S. 180, 211–213; *Federal Land Bank* v. *Priddy*, 295 U.S. 229, 235; *Cleveland* v. *United States*, 323 U.S. 329, 333; *Carson* v. *Roane-Anderson Co.*, 342 U.S. 232, 233–234.[1]

Moreover, the opinion below implies a power in state authority to exercise supervisory jurisdiction over the activities of a federal instrumentality. On the contrary, Congress has expressly delegated to the Farm Credit Administration the power to exercise general supervisory authority over the Federal Land Banks. Federal Farm Loan Act, *supra*, Sec. 17 (12 U.S.C. 831(i)). See *Greene County Nat. F. L. Ass'n* v. *Federal Land Bank*, 152 F. 2d 215, 220 (C.A. 6), certiorari denied, 328 U.S. 834.

Although the decision itself concerns only a particular state tax on property of a single land bank, yet, as the petition for certiorari points out, the total property involved in the case of this petitioner, and especially of all twelve Federal Land Banks, is most

[1] The opinion below suggests, but does not decide, that the Bank had no authority to grant the lease which was taxed. Even if the Bank lacked authority, it does in fact hold the lease, which is personal property, and so is in terms within the congressionally-granted tax immunity. The court below cites no authority for the proposition that tax-exempt property in fact held by the United States or its instrumentality is subject to taxation because the right on the part of the instrumentality to hold the property may be questioned.

substantial. Moreover, the decision below calls into question the extent of Congress's power to provide for a tax exemption of any federal instrumentality by making the scope of the exemption turn, not on what Congress has provided, but upon the State's interpretation of what activities of that instrumentality are to be considered as governmental in character.

For the foregoing reasons and those stated in the petition, it is respectfully submitted that the petition for certiorari should be granted.

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JANUARY 1961.

U.S. GOVERNMENT PRINTING OFFICE: 1960

No. 61 [illegible]

In the Supreme Court of the United States

OCTOBER TERM, 1960 61

THE FEDERAL LAND BANK OF WICHITA, *Petitioner*,

v.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL., *Respondents*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

BRIEF FOR RESPONDENTS IN OPPOSITION

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28-7198

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OCTOBER TERM, 1960

No. 614

THE FEDERAL LAND BANK OF WICHITA, *Petitioner*
v.
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, BEN H. PAXTON, Sheriff; ALICE CRONIC, County Treasurer; EUNICE RICH, Clerk of the District Court; and THE STATE OF KANSAS, *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

BRIEF FOR RESPONDENTS IN OPPOSITION

QUESTION PRESENTED

Whether the petitioner's personal property here involved enjoys express or implied immunity from state taxation where the property is held for a purpose not connected with, nor furtherance of, the federal governmental functions delegated to petitioner by the Federal Farm Loan Act of July 17, 1916, but instead is held for a purpose wholly unrelated to and outside the scope of its statutory functions.

STATEMENT OF THE CASE

The facts are essentially set out in the opinion of the Kansas Supreme Court (187 Kan. 148), which is printed as Appendix A to the petition for the writ.

In 1922 the petitioner bank made a farm mortgage loan of $3,000 in the usual course of its money-lending function upon a certain tract of land in Kiowa County, Kansas. In 1941 the loan became in default, the mortgage was foreclosed, and title to the real estate was acquired by the bank in order to protect its interest as mortgagee. In 1942 the petitioner entered into a contract for a deed with Richard P. Janson, the present owner of the property, and on August 8, 1946, conveyed the property to him for a total consideration of $3,500.00. However, the deed reserved an undivided one-half interest in the mineral estate underlying the tract for a period of twenty years and for so long thereafter as minerals were produced on the premises or were being developed or operated.[1]

The trial court found from undisputed evidence that when the petitioner conveyed the tract to Janson in 1946 it had fully recouped any financial loss suffered by reason of the mortgage foreclosure.[2] No evidence was offered by

1. Under Kansas law, real property may be horizontally "severed" so as to create a surface estate and a subsurface or mineral estate. (*Shafer v. Kansas Farmers Union Royalty Co.*, 146 Kan. 84, 69 P. 2d 4.)

2. The detailed findings of fact made by the trial court were set out in full in the opinion of the Kansas Supreme Court. (See Appendix A to the petition for the writ, pp. A6-A9.)

petitioner as to its purpose in retaining this particular mineral estate other than a general resolution of its Board of Directors authorizing it "to reserve an interest in minerals or mineral rights in connection with sales of its acquired real estate *in order to realize as much as possible from such sales.*" [3]

In 1946 when the petitioner retained its mineral estate, there was no mineral production or immediate prospect thereof on the premises or on farm lands in the vicinity. Nine years later a pool of gas was discovered in the area, petitioner granted an oil and gas lease on its property, a gas well was drilled on adjacent property, and petitioner's mineral estate was unitized for production purposes with that well. In 1957 petitioner received its first royalty payment under this lease, which royalty payment was assessed for personal property tax by Kiowa County. That assessment forms the subject matter of this lawsuit.[4]

The petitioner filed suit in the District Court of Kiowa County, Kansas, to enjoin collection of the tax, the in-

3. Petition, Appendix A, page A7. (Emphasis supplied.) This resolution was adopted pursuant to a regulation of the Farm Credit Administration which granted approval to land banks to hold mineral and mineral rights for periods in excess of five years, "when in the banks opinion it is in the banks interest to do so." (Petition, Appendix A, page A7.)

4. Up to the time of the trial in March, 1959, the petitioner had derived a total of $2,017.20 in royalties under this lease and, in addition, had received $960.00 in rents and bonuses under this lease and a previous lease granted in 1944. The petitioner was found to have expended a total of $33.15 in real property taxes upon its mineral interest during the period from 1947 through 1958.

junction was denied and petitioner appealed to the Kansas Supreme Court where the trial court's judgment was affirmed by the opinion set forth in Appendix A to the petition for the writ.

ARGUMENT

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW DOES NOT CONFLICT WITH PREVIOUS DECISIONS OF THIS COURT

The fundamental issue presented by this case is whether immunity from state taxation extends to property of a federal instrumentality which is not held in furtherance of the statutory functions of that instrumentality, but instead is being held for a purpose wholly unrelated to and outside the scope of such functions. The issue here is not, as suggested by petitioner,[5] whether *all* mineral interests owned by federal land banks are, *per se*, held beyond the authority of such instrumentalities. A differentiation must be made as to whether ownership of a particular mineral estate is an incident to one of the delegated functions of the bank. The decision of the court below makes this necessary distinction:

> "One of the primary functions of the bank is to extend credit to persons engaged in agriculture and to make loans on the security of real-estate mort-

5. Petition, pp. 8, 9.

> gages. The acquisition and holding of real estate is a mere incident to its money-lending functions and is authorized only when it is a necessary incident to those functions." [6]

The decision of the Kansas Supreme Court specifically rested upon the finding that the holding of this property under the particular fact situation found to exist in this case was *not* incidental to the performance of petitioner's statutory functions:

> ". . . (T)he property here involved . . . is not being held and used in furtherance of a federal purpose." [7]

Thus limited, the decision below does not represent a threat or challenge to the doctrine of express or implied immunity from state taxation of the instrumentalities employed by the United States to carry out its delegated powers.

The decision below does not conflict with previous decisions of this Court. It is entirely consistent with the reasoning of previous decisions of this Court concerning immunity of federal instrumentalities from state taxation. The issue of this case does not appear to have been heretofore decided by this Court.

Certainly the decision below is not in conflict with *Federal Land Bank v. Bismarck Lumber Company*, 314 U. S.

6. Petition, Appendix A, pp. A 15, A 16.
7. Petition, Appendix A, p. A 16.

95, as suggested by the petition and by the memorandum for the United States.[8] The *Bismarck* case concerned an attempt to divide the federal functions of land banks into two categories, governmental and proprietary, and then declare the proprietary federal function (in that case, the money-lending function) to be subject to state taxation. The *Bismarck* decision has no application to this case as there is no federal function here involved. In *Bismarck* this Court held that federal instrumentalities do not engage in proprietary but only in governmental functions. The decision below is consistent with *Bismarck* as this decision held that the petitioner was not here "engaged in the furtherance of its governmental function."[9]

The decision below is said to be based on an argument presented, but rejected, in *Smith v. Kansas City Title and Trust Company*, 255 U. S. 180.[10] But the *Smith* case involved two points which are *not* at issue here, namely, the power of Congress to create land banks and the power of Congress to extend immunity from state taxation to activities in furtherance of their statutory functions. The decision below does not conflict with either of these two points.

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8. Petition, pp. 8, 9; Memorandum, pp. 2, 3.
9. Petition, Appendix A, p. A 16.
10. Memorandum, p. 3.

The statement from *Federal Land Bank v. Priddy*, 295 U. S. 229, cited in the memorandum for the United States [11] points out that the banks are organized, in part at least, for profit, but this statement has specific reference to the fact that section 5 of the Federal Farm Loan Act authorizes a dividend to be paid. The money-lending functions of petitioner may, of course, yield a profit after expenses, and this section of the Act merely permits a disbursement of such profit in the form of a dividend to the stockholders.

However, the memorandum appears to suggest that the dividend feature of the Act empowers land banks to go outside their statutory functions and engage in any enterprise or activity which might produce a profit (*i. e.*, dividend). However, this Court has denied the existence of a power on the part of the federally created banks to engage in profit making activities which are not incidental to nor within the scope of their statutory functions.[12] The profit referred to in the *Priddy* case must of necessity be that profit realized from the exercise of the statutory functions of the bank. The *Priddy* case simply points out that some of the money derived from the exercise of those statutory functions is paid into private hands in the form of a dividend.

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11. Memorandum, p. 3.

12. *First National Bank v. Converse*, 200 U. S. 425, 438, 439.

II.

THE DECISION BELOW IS CORRECT

The reason for immunizing a federal instrumentality from state taxation is to protect the functions of government which have been delegated to that instrumentality:

> "The exercise of such taxing power by the states might be so used as to hamper and destroy the exercise of authority conferred by Congress, *and this justifies the exemption.*" [13] (Emphasis supplied.)

Where a federal instrumentality holds property not in furtherance of its statutory functions but for a purpose wholly outside the scope of those functions, the reason for tax immunity *ceases to apply*, as no federal function could be hampered by taxing such property. The decision below so held:

> " . . . Under the facts before us, how does the imposition of this personal property tax impede or interfere with the legitimate function of the federal instrumentality involved? It does not—and when the reason for the rule of tax immunity, namely, the protection of functions of government —fails, the rule fails." [14]

When Congress delegated certain functions to land banks and immunized those functions from state taxation, manifestly it intended the tax immunity thereby granted to protect only those functions thus validly authorized. In *Fed-*

13. *Smith v. Kansas City Title and Trust Co.*, 255 U. S. 180, 213.
14. Petition, Appendix A, p. A 16.

eral Land Bank v. Bismarck Lumber Company, 314 U. S. 95, this Court said:

> "We have held on three occasions that Congress has authority to prescribe tax immunity for *activities connected with, or in furtherance of*, the lending functions of federal credit agencies. (1. c. 103.) (Emphasis supplied.)

And in *Pittman v. Home Owners' Loan Corporation*, 308 U. S. 21, in commenting on the tax immunity granted by Congress to federally created corporations, this Court said:

> "Congress has not only the power to create a corporation to facilitate the performance of governmental functions but has the power to protect the *operations thus validly authorized.*" (1. c. 32, 33) (Emphasis supplied.)

This court has many times held that federal instrumentalities possess only those powers that are expressly or impliedly granted them by Congress.[15] This court has also held that ownership of property which is not incidental to the exercise of those delegated powers is impliedly prohibited to a federal instrumentality.[16] Federally created banks may hold a certain type of property which, under one set of circumstances, is a proper incident to its money-lending function but under different circumstances the holding of the same property may be impliedly prohib-

15 *Stark v. Wickard*, 310 U. S. 288; *Federal Trade Commission v. Eastman Kodak Co.*, 283 U. S. 645; *California National Bank v. Kennedy*, 167 U. S. 362.

16. *First National Bank v. Converse*, 200 U. S. 425.

ited.[17] And, even though a bank lawfully acquires property to protect its debt subsequent events may convert the ownership into one beyond its powers.[18] Here the petitioner lawfully acquired the property to protect its debt, located a buyer and sold it for a consideration wholly adequate to recoup its loss. But instead of bargaining and selling the entire tract in 1946, it held out of the bargain one-half of the mineral estate for the stated purpose of realizing "as much as possible from the sale."[19] Frankly speaking, the petitioner thereupon entered the oil and gas business, speculating that there would some day be oil and gas production in the area and retaining this real property mineral estate in order to participate in such future mineral development. The question remains, was this continued real property ownership within the express or implied powers of the petitioner?

Title 12, United States Code, § 781 Fourth (b), the basis of petitioner's power to acquire and hold real property, expressly provides that it may acquire same:

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17. *First National Bank v. Converse, supra:* "To concede that a national bank has ordinarily the right to take stock in another corporation as collateral for a present loan or as security for a pre-existing debt does not imply that, because a national bank has lent money to a corporation, it may become an organizer and take stock in a new and speculative venture." (1. c. 439.)

18. *Birdsell Manufacturing Co. v. Anderson*, 104 Fed. 2d 340, 342 (6th Cir., 1939)

19. Petition, Appendix A, page A7. It is unclear how its failure to offer and sell the entire tract enabled the petitioner "to realize as much as possible *from the sale.*" (Emphasis supplied.)

> ". . . *in satisfaction of debts* or purchased at at sales under judgments, decrees, or mortgages held by it. . . ." (Emphasis supplied.)

The petitioner's authority to acquire and hold real property is therefore circumscribed by this section. This section must be read in connection with the other delegated powers of the bank enumerated in Title 12, § 641, *et seq*. The primary purpose for which the petitioner was created was to provide a rural credit system to extend credit to persons engaged in agriculture.[20] An examination of the statutes under which the petitioner was created discloses that one of its primary functions is that of lending money on the security of real property mortgages. The acquisition and holding of real property is, therefore, a mere incident to its money-lending function and should at all times be considered in light of this function. In other words, it was not the design or intent of Congress that the Federal Land Bank would acquire or hold real property interests for speculation and profit unrelated to statutory functions. The petitioner was not intended by Congress to become the proprietor of mineral estates simply for the sake of owning property. A reading of the entire Federal Farm Loan Act discloses that the acquisition and holding of real property is proper only when it is an incident to the Bank's

20. *Federal Land Bank v. Gaines*, 290 U. S. 247, 250.

money-lending function and necessary for the protection of the debt and recoupment of any losses suffered by reason of foreclosure of the property.[21]

Section 26 of the Federal Farm Loan Act (12 U. S. C. §§ 931-933) grants immunity from state taxation to the personal property of federal land banks. It would appear virtually axiomatic that Congress intended this tax immunity for personal property to protect only property used in furtherance of those functions "validly authorized" in the other sections of the Act. Conversely stated, Congress cannot be said to have intended that activities impliedly prohibited to land banks be clothed with tax immunity. Nor can any cogent reason be advanced for finding that implied constitutional immunity from state taxation extends to such non-governmental activities carried on by federal land banks.

This construction of the legislative intent of Congress forms the basis upon which the decision below rested:

> "We believe that the Congress, in enacting the exemption provision of Sec. 931, above, *intended* that the tax immunity there provided should apply only when the bank is engaged in the furtherance of its governmental function." (Emphasis supplied.)[22]

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21. It is significant that petitioner has not sought to relate its retention of this mineral estate to any of its statutory functions.

22. Petition, appendix A, p. A16.

This point was not directly raised, discussed nor decided in the several cases cited in the petition for the writ and in the memorandum for the United States.

The memorandum for the United States points out that it is for Congress to determine the extent of the tax immunity enjoyed by federal instrumentalities; [23] the decision below is in complete accord with this view as illustrated by the preceding quote from the decision of the Kansas Supreme Court.

It is argued that the decision below "implies" a power in state authorities to "exercise supervisory jurisdiction over the activities of a federal instrumentality." [24] But the decision below does not purport to control in any manner the activities of the petitioner; it does not purport to divest nor does it force petitioner to divest itself of the ownership of the property; it does not enjoin petitioner from continuing to lease the mineral estate and receive royalties; and the opinion below recognizes that petitioner owns the property—the tax assessment is based upon that ownership.

Courts are not denied the power to determine the question of whether a federal instrumentality holds property outside the scope of its statutory authority.[25] The case cited in the memorandum for the United States in support

23. Memorandum, p. 4.
24. Memorandum, p. 8.
25. *First National Bank v. Converse*, 200 U. S. 425.

of its argument does not deny the power of courts to determine the scope of the power possessed by federal instrumentalities; instead it affirms the existence of such power:

> "This is not to say that there may be no judicial checks to arbitrary and capricious action on the part of the bank, to proceedings in violation of law or tainted with fraud. . . ." (*Greene County Nat. F. L. Ass'n vs. Federal Land Bank*, 152 F. 2d 215, 220, cited at page 4 of the memorandum.)

However, it should be pointed out again that the decision below does not purport to control the land bank's ownership of this or any other property. A corporation may hold legal title to property even though such holding is beyond its statutory power.[26]

The memorandum for the United States also points out that "the court below cites no authority" to support its conclusion on the issue of this case.[27] The memorandum fails to record, however, that the authorities cited in the memorandum and in the petition do not support a contrary conclusion. Previous decisions of this Court do not appear to have decided the point; no decisions of lower federal courts have been found in point. In *Central*

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26. "A corporation has no right or authority to do acts which are not within the powers conferred upon it by the legislature, but, as in the case of an individual, *it is possible for it to do wrong*. It may exceed its powers and do an ultra vires act. . . . A conveyance or transfer of property to . . . a corporation may transfer the title, though the corporation has no power under its charter to hold . . . the property." (*Fletcher's Cyclopedia of Corporations*, Vol. 7, sec. 3424.) (Emphasis supplied.)

27. Memorandum, p. 4.

Methodist Church v. City of Meriden, 126 Miss. 780, 89 So. 650, a state statute exempted from taxation "all property" belonging to a religious society. A second statute limited the amount of real property that a religious society might own. The church acquired property in excess of its authority and resisted an attempt to tax it on the grounds that *all* of its property was exempt by statute. But the Mississippi Supreme Court held otherwise:

> "We think this principle is sound; that it never was the purpose of the Legislature to exempt from taxation any more property than a religious society could lawfully hold." (l. c. 652.)

We think the principle of this decision is sound. The petitioner advances no argument or authority to justify immunity from state taxation for its property not held in furtherance of its governmental purpose. The decision below is limited in application to such property, and does not authorize state taxation of governmental functions. The decision below is consistent with the reasoning and purpose which underlies the doctrine of governmental tax immunity as explained in previous decisions of this court.

CONCLUSION

The issue of this case concerns itself with property of a federal instrumentality which is not held in furtherance of a governmental function, but instead is held for a purpose wholly unrelated to the statutory functions of the instrumentality. The decision below is not in conflict with previous decisions of this Court concerning governmental tax immunity and is, in fact, consistent with reasoning of those decisions. The decision below is correct in concluding that Congress, in granting tax immunity from state taxation to personal property of land banks, intended to immunize *only* that property held or used in furtherance of the statutory functions of land banks. Respondents respectfully move that the petition for a writ of certiorari to review the judgment of the Kansas Supreme Court be denied.

Respectfully submitted,

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No. 25

In the Supreme Court of the United States

OCTOBER TERM, 1961

FEDERAL LAND BANK OF WICHITA, PETITIONER

v.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 25

FEDERAL LAND BANK OF WICHITA, PETITIONER

v.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the Supreme Court of Kansas (R. 38–51) is reported at 187 Kan. 148. The findings of fact and conclusions of law of the District Court of Kiowa County, Kansas (R. 24–28), are not officially reported.

JURISDICTION

The judgment of the Supreme Court of Kansas was entered on August 4, 1960 (R. 39). On August 9, 1960, the Supreme Court of Kansas granted petitioner's motion for an extension of twenty days from August 15, 1960, to file a motion for rehearing (R. 52–53). A motion for rehearing was filed on August 31, 1961, and denied on October 5, 1960 (R. 53). The

petition for a writ of certiorari was filed on December 29, 1960, and granted on March 20, 1961 (R. 54). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

Whether, in view of the provision in the Federal Farm Loan Act exempting Federal Land Banks from "Federal, State, municipal, and local taxation, except taxes upon real estate," a political subdivision of a State can constitutionally subject the royalty interest of a Federal Land Bank in an oil and gas lease to a personal property tax.

CONSTITUTIONAL PROVISION, STATUTES AND REGULATIONS INVOLVED

The Supremacy Clause of the United States Constitution, Art. VI, para. 2, provides in pertinent part as follows:

> This Constitution, and the laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The relevant provisions of the Federal Farm Loan Act of 1916 (39 Stat. 360), as amended, 12 U.S.C. 781, Fourth, 931–933; of the General Statutes of Kansas (1949), Sections 79–329 through 79–334; and of the Regulations issued by the Farm Credit Administration (6 C.F.R. 10.64) are printed in the Appendix, *infra*, pp. 27–30.

STATEMENT

The facts, as found by both courts below (R. 24–27, 39–42), are not in dispute and may be summarized as follows:

Petitioner, the Federal Land Bank of Wichita, is a federal instrumentality organized under an Act of Congress, the Federal Farm Loan Act of 1916 (R. 39–40). In 1932, in the course of its regular farm mortgage business, it made a loan of $3000 and as security therefor took a mortgage on the quarter section of land in Kiowa County, Kansas, involved in this case. The loan being in default in 1941, petitioner commenced a foreclosure action and was awarded judgment in the amount of $3506.79, with interest. Later that year, petitioner bid in the land at sheriff's sale for $3234.37 (the amount of the judgment, interest and costs, less a credit of $150 for cancellation of the stock issued in connection with the loan) and in May 1943 received a sheriff's deed to the premises (R. 40, 42–43).

In September 1942, Richard P. Janson, the present owner, contracted to buy the land for $3500, and in August 1946, petitioner conveyed the property to Janson and his wife by a warranty deed reciting the consideration of $3500. By the deed, petitioner reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May 1943 and for so long thereafter as minerals are produced on the premises or are being developed or operated (R. 40). Previously, in 1941, the Board of Directors of petitioner, finding it "to the best interests of the Bank to reserve an interest in minerals or

mineral rights in connection with sales of its acquired real estate in order to realize as much as possible from such sales," had authorized such reservations of mineral rights (R. 43-44).

In 1946, when petitioner conveyed the land in question to Janson and reserved the one-half interest in the mineral estate, it had already recouped its loss suffered by reason of the default on the mortgage loan relating to that land. At that time, there was no mineral production or any immediate prospect of such production on the premises or on lands in the vicinity (R. 40). However, in 1955 a pool of gas was discovered in the area, and the Janson land is now unitized for oil and gas production with an adjoining quarter section in which there is located a gas well—the source of the oil and gas from which petitioner's royalty interest is derived (R. 41).

In 1944, petitioner had granted a ten-year oil and gas lease to the property to V. C. Reuse. In June 1955, petitioner granted the Gulf Oil Corporation a second oil and gas lease to the property. As of the time of the trial of the present case (the spring of 1959), petitioner had derived $960 in rents and bonuses from the two leases and $2017.20 in royalties under the second lease. From 1947 through 1958, petitioner paid a total of $33.15 in real property taxes upon its interest in the mineral estate (R. 41, 44).

In 1957, Kiowa County levied and assessed for the year 1957 a personal property tax against petitioner's royalty interest under the oil and gas lease. This tax was levied pursuant to provisions of the General Stat-

utes of Kansas declaring such mineral interests to be personal property and authorizing their taxation. Petitioner brought this action in the District Court of Kiowa County to enjoin the levy and collection of the tax on the ground that Section 26 of the Federal Farm Loan Act exempts it from the payment of all taxes except real estate taxes (R. 41). The trial court denied the injunction (R. 28), and the Supreme Court of Kansas affirmed (R. 51). In upholding the tax, the latter court held that petitioner's reservation and retention of the mineral interest in question was not pursuant to any of its governmental functions, that the "implied immunity" of federal instrumentalities from state taxation applied only with respect to the governmental functions of such instrumentalities and that, in any event, Congress did not intend its tax immunity to apply where a Federal Land Bank was not acting in furtherance of its governmental functions (R. 48–51).

SUMMARY OF ARGUMENT

A political subdivision of the State of Kansas has imposed a personal property tax on the royalty interest in a lease of certain mineral rights that petitioner, a Federal Land Bank, reserved when it sold some property it had obtained upon foreclosure on a defaulted mortgage loan. The imposition of that tax is in plain conflict with the exemption from State and local taxation that Congress granted Federal Land Banks by Section 26 of the Federal Farm Loan Act, and hence is unconstitutional by virtue of the Supremacy Clause of the Federal Constitution. The Court, notably in *Federal*

Land Bank v. *Bismarck Lumber Co.*, 314 U.S. 95, has already held that Section 26 is entitled to a liberal construction and that it is applicable to taxes comparable to the one at issue. The Court also held, in the same case, that it was within the constitutional power of Congress to grant the tax immunity in question.

The Supreme Court of Kansas sought to escape the force of Section 26 by holding that, under the doctrine of "implied immunity," petitioner's royalty interest was not immune from State taxation because retention of the mineral rights was not necessary to recoup losses on the mortgage loan in question and hence was not in furtherance of a "governmental" function. This approach ignores the fact that, since petitioner is protected by an express statutory immunity, no doctrine of "implied immunity" is applicable here. Moreover, this Court has already ruled that the distinction between "governmental" and "proprietary" activities does not apply to the federal government, since all exercises of its delegated powers are "governmental."

It is clear from both the nature of the Federal Land Bank system and the expressions of congressional purpose in establishing that system that the royalty interest in question is within the scope of the tax exemption declared in Section 26. The central purpose of that system was to make mortgage loans available to farmers at the lowest possible interest rates. To that end, the system was designed in such a way

that any profits earned would be returned to the farmer-borrowers, thus reducing their effective interest rates; the tax exemption was regarded by Congress as necessary to keep those profits from being dissipated. Thus, even if petitioner's retention of the mineral interest in question served no other purpose than to make a profit (a profit that would necessarily be passed on to farmer-borrowers under the cooperative features of the system), it was advancing the central purpose of the Federal Land Banks and was entitled to tax exemption.

The Supreme Court of Kansas also raised some question as to the authority of petitioner to retain the mineral interest in question. Petitioner's authority to do so under the Federal Farm Loan Act and implementing regulations issued by the Farm Credit Administration is clear. Even if there is any question on that point, however, the matter is one for the Farm Credit Administration, the agency charged by Congress with the responsibility for supervision over the Federal Land Bank system; it cannot be raised collaterally by state taxing authorities. This is emphasized by the fact that Congress has knowingly declined to interfere with the Farm Credit Administration's supervision of the mineral-interest activities of Federal Land Banks. In any event, lack of authority on the part of petitioner to retain the mineral interest in question would not make the royalty subject to tax, for the statutory immunity is plainly broad enough to cover any personal property in fact owned by a Federal Land Bank.

ARGUMENT

A. CONGRESS HAS EXPRESSLY EXEMPTED PETITIONER FROM STATE TAXATION OF ITS PERSONAL PROPERTY

It seems scarcely open to question that the tax at issue in this case cannot constitutionally be imposed on petitioner by the State of Kansas or one of its political subdivisions. The character of the tax is not disputed. It was levied by the County of Kiowa as a personal property tax (R. 6, 8) on petitioner's royalty interest in an oil and gas lease, an interest that "for the purpose of valuation and taxation" had been declared by Kansas law "to be personal property," Section 79-329, General Statutes of Kansas (1949) (Appendix, *infra*, pp. 28-29). Indeed, the Supreme Court of Kansas expressly recognized that "[w]e are concerned here with a tax only on personal property" (R. 48).

Clearly and unequivocally, Congress has exempted petitioner, as a Federal Land Bank, from all such taxes. It has provided, in Section 26 of the Federal Farm Loan Act of 1916, 39 Stat. 380, 12 U.S.C. 931 (Appendix, *infra*, p. 27).

> That every Federal land bank * * * including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate * * *.[1]

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[1] The minerals in the earth are, under Kansas decisions, regarded as real property, and when owned separately from the surface rights they are separately assessed and taxed as real property. *Mining Co.* v. *Crawford County*, 71 Kan. 276. Such taxes have been paid by petitioner (see p. 4, *supra*) and are not in dispute.

By the comprehensiveness of the language it used, as well as by the limited character of the exception it provided, Congress made it unmistakably plain that a Federal Land Bank like petitioner is not subject to state personal property taxes. Under the Supremacy Clause, U.S. Constitution, Art. VI, para. 2, the congressional exemption must prevail, and the conflicting effort by the State to impose this tax must fall.

To the limited extent that the language of Section 26 might require construction, this Court has already construed it. In *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 95, the Court held that a state sales tax could not be applied to lumber and other building materials purchased by a Federal Land Bank to effect necessary repairs and improvements to buildings on properties acquired through foreclosure. In finding that the statutory exemption defeated that tax, the Court emphasized the unqualified character of the language of Section 26, noting that the "including" clause "connotes simply an illustrative application of the general principle" (314 U.S. at 99–100). Particularly significant is the Court's observation that "a broad construction [of Section 26] is indicated by Congress's intention to advance credit to farm borrowers at the lowest possible interest rate" (*id.* at 100). See, also, *Federal Land Bank* v. *Crosland*, 261 U.S. 374, where the Court held that Section 26 exempted mortgages executed to a Federal Land Bank from a state recording tax. The personal property tax in the present case applies just as directly and has just as significant an impact on the opera-

tions of a Federal Land Bank as the sales and recording taxes involved in the *Bismarck* and *Crosland* cases. These decisions have dispelled any possible doubt as to the applicability of Section 26 to taxes such as the one at issue.

In upholding the tax in the present case, the Supreme Court of Kansas did not raise any question as to the power of Congress to immunize the petitioner from state taxation. And rightly so, for the existence of that power is no longer open to serious question. This Court spoke unequivocally on the point in the *Bismarck* case, *supra* (314 U.S. at 102–103):

> Congress has the power to protect the instrumentalities which it has constitutionally created. This conclusion follows naturally from the express grant of power to Congress "to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States, Const. Art. I, § 8, par. 18." *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21, 33, and cases cited. We have held on three occasions that Congress has authority to prescribe tax immunity for activities connected with, or in furtherance of, the lending functions of federal credit agencies. *Smith* v. *Kansas City Title & Trust Co., supra*; *Federal Land Bank* v. *Crosland*, 261 U.S. 374; *Pittman* v. *Home Owners' Loan Corp., supra.* The first two of these cases dealt with the very § 26 now in issue. They are conclusive here.

There are countless other decisions in which this Court has sustained the power of Congress to determine the extent to which federal instrumentalities shall be exempt from state taxation. See, *e.g.*, *Carson* v. *Roane-Anderson Co.*, 342 U.S. 232, 233–234; *Cleveland* v. *United States*, 323 U.S. 329, 333; *Maricopa County* v. *Valley Bank*, 318 U.S. 357; *Federal Land Bank* v. *Priddy*, 295 U.S. 229, 235. There is no escaping the impact of these rulings. The exemption declared by Section 26 of the Federal Farm Loan Act "must prevail over any inconsistent laws of a State." *Federal Land Bank* v. *Crosland*, *supra*, 261 U.S. at 377. Since the applicability of its plain language to the Kansas personal property tax is clear, there is no occasion for further inquiry, and the judgment below should be reversed forthwith.

B. THERE IS NO BASIS FOR ENGRAFTING ANY "IMPLIED" QUALIFICATION ONTO THE EXPRESS STATUTORY EXEMPTION

Apparently recognizing the impossibility of finding the Kansas tax beyond the express terms of Section 26 of the Federal Farm Loan Act, the Supreme Court of Kansas sought to escape its force by engrafting upon it an implicit qualification. The court indulged in the assumption that, in reserving the oil and gas interest sought to be taxed, the petitioner was not acting in a "governmental" capacity; this, because "the bank had been made whole and had fully recouped any loss it may have sustained resulting from the foreclosure" so that, "[f]or all the record shows, the mineral interest was retained merely as a 'specu-

lative investment' after the governmental function with respect to the original mortgage investment had been accomplished" (R. 48, 49). On the basis of this assumption, the court found that the doctrine of "implied immunity" of federal instrumentalities from State taxation applies only to the "governmental," and not to the "proprietary," functions of the instrumentality. Alternatively, it concluded that Congress intended that such a distinction qualify its grant of immunity. There is no foundation for either of these conclusions or for the assumption underlying them.

1. No Doctrine of Implied Immunity Is Applicable Here, Nor, If It Were, Would It Be Subject to a "Governmental-Proprietary" Distinction

In its primary approach to the question presented by this case (R. 48–50), the court below treated the question as involving the "implied immunity" of a federal agency from taxation by a State. Thus, its analysis consisted principally of discussing and quoting its own earlier opinion in *Clinton* v. *State Tax Commission*, 146 Kan. 407, which had held the salary of an employee of the Federal Land Bank subject to state income tax. But in that case, the court had carefully noted that the tax was "in no sense a direct tax on the corporation or its assets" and that hence there was no statutory exemption involved (146 Kan. at 422); it reached the matter of "implied immunity" only because "[w]here the answer to the question of immunity is not made plain by the words of the statute, it becomes necessary to ascertain whether immunity is granted by implication" (146 Kan. at

421). In the present case, there is no room for such an inquiry; here, "the answer to the question of immunity" *is* "made plain by the words of the statute"—the clearest, most unequivocal words Congress could have used. In any event, this Court has provided the conclusive answer to any attempt to engraft, by implication, a "governmental-proprietary" qualification upon the immunity of a federal instrumentality from state taxation. In *Federal Land Bank* v. *Bismarck Lumber Co., supra,* 314 U.S. at 102, the Court held that the distinction between governmental and proprietary functions is not applicable to the federal government:

> The argument that the lending functions of the federal land banks are proprietary rather than governmental misconceives the nature of the federal government with respect to every function which it performs. The federal government is one of delegated powers, and from that it necessarily follows that any constitutional exercise of its delegated powers is governmental. *Graves* v. *New York ex rel. O'Keefe,* 306 U.S. 466, 477. It also follows that, when Congress constitutionally creates a corporation through which the federal government lawfully acts, the activities of such corporation are governmental. *Pittman* v. *Home Owners' Loan Corp.,* 308 U.S. 21, 32; *Graves* v. *New York ex rel. O'Keefe, supra,* 477.

See, also, *Mayo* v. *United States,* 319 U.S. 441, 444. Since the constitutional power of Congress to create

the Federal Land Banks, and of the federal government to act through them, is indisputable (see pp. 10–11, *supra*), it is equally clear that the activities of the banks must necessarily be deemed governmental and hence, under the Kansas Supreme Court's own theory, immune from state taxation.

2. Congress Plainly Intended Such Activities of Federal Land Banks as Are Involved Here To Be Immune from Taxation

The alternative conclusion of the Supreme Court of Kansas, "that the Congress, in enacting the exemption provision in [Section 26], intended that the tax immunity there provided should apply only when the bank is engaged in the furtherance of its governmental function" (R. 51), fares no better. The court cites no support for this statement; neither the words of the statute nor its legislative history lends any basis for inferring such an intention on the part of Congress. On the contrary it is clear that activities of the Federal Land Banks such as those involved here (whether they be for the purpose of recouping losses on default or of making a profit) were recognized by Congress to be vital to the accomplishment of the banks' purpose and were intended by Congress to be within the scope of its tax exemption. This is evident not only from the nature of the Federal Land Bank system, but also from specific expressions of congressional purpose.

The Federal Land Bank system has been in active operation since 1917.[2] There are twelve such banks, each of them responsible for serving a farm credit district; District No. 9, served by petitioner, embraces the states of Colorado, Kansas, New Mexico and Oklahoma. The banks are specialized rural credit institutions supervised, along with other similar institutions, by the Farm Credit Administration. The Federal Land Banks do not carry on a general banking business, nor do they accept general deposits.[3] Their principal activity is the making of long-term loans to farmers for agricultural purposes, secured by first mortgages on farm lands. The funds for the loans are obtained by the sale of consolidated bonds. There is no government capital in the Land Banks,[4] nor are there any individual stockholders.

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[2] Useful descriptions of the system's functioning (from which much of the following material was taken) are to be found in the following pamphlets prepared and distributed by the Farm Credit Administration: *The Federal Land Bank System—How It Operates* (FCA Circ. 35, Rev. 1961); *1917–1957: Years of Progress with the Cooperative Land Bank System* (FCA Circ. E–43, 1957); *The Cooperative Farm Credit System—Functions and Organization* (FCA Circ. 36A, Rev. 1959). The functions of the Federal Land Banks have been previously considered by this Court in *Smith* v. *Kansas City Title Co.*, 255 U.S. 180, 202–206; *Federal Land Bank* v. *Crosland*, 261 U.S. 374; *Federal Land Bank* v. *Gaines*, 290 U.S. 247, 252–253; *Knox Loan Assn.* v. *Phillips*, 300 U.S. 194; and *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 95, 102.

[3] They are authorized by Section 6 of the Federal Farm Loan Act to serve as depositories of public money, but they have not been used for this purpose since 1923, except briefly in 1934.

[4] The government provided most of the capital with which the system was started and furnished additional capital in later years; however, these amounts had been fully repaid by 1947.

all of the stock of the Land Banks being owned by federal land bank associations (formerly called national farm loan associations). The stock in the associations in turn is owned by the farmer-borrowers.

The individual prospective borrower makes his initial approach to the federal land bank association, a local organization of ten or more members with its own bylaws and officers. The members are borrowers and remain members only so long as they continue to be borrowers. Each borrower must subscribe for stock in the local association in the amount of five percent of the loan; when the loan is paid off the stock is retired. In turn, the local association, in obtaining funds for the loan from the Federal Land Bank, subscribes for stock in the Land Bank in the amount of five percent of the loan. The stock of each thus reflects the loans outstanding. Any profits of the Federal Land Banks, above expenses and reserves, are paid in dividends to its stockholders, the federal land bank associations. The associations in turn pay their profits, in the form of dividends, to their member-stockholders. Since these are all borrowers, the profit of the Federal Land Bank system results in a reduction of the effective rate of interest on the loans.

The application of system profits to reduce effective interest rates goes to the very heart of the objectives Congress sought to achieve in enacting the Federal Farm Loan Act of 1916. Eight years of intensive study of rural credit problems by both the

executive and legislative branches had disclosed that existing credit institutions were unable to provide farmers with loans on a sufficiently long-term basis and at sufficiently low interest rates. The relevant committee report (H. Rep. No. 630, 64th Cong., 1st Sess. 4) stated:

> It has become manifest that a new form of credit organization must be established which shall be specially and peculiarly adapted to the farmers' requirements. * * * For example, it must be enabled and prepared to grant long-time amortizable loans upon farm-land mortgages at low interest rates * * *.

The Joint Committee on Rural Credits listed "[l]ow interest rates, long-term mortgages, and amortization payments for the farmer" as among the "primary considerations in devising such a system" for rural credit. H. Doc. No. 494, 64th Cong., 1st Sess. 8; see, also, *id.* at 11–12; S. Rep. No. 144, 64th Cong., 1st Sess. 2, 4, 7–9. There was repeated emphasis throughout the debates as to the necessity of securing for the farmer low interest rates—rates lower, indeed, than could be gotten elsewhere. Senator Hollis, manager of the bill in the Senate, said (53 Cong. Rec. 7024):

> If we can help him [the farmer] and give him cheap money, we shall accomplish the purpose of the bill. If we can not do it cheaper than existing banks do it, we can not help him.

See, also, *e.g.*, 53 Cong. Rec. 6696, 6698, 7021, 7023.

The rural credit system devised by Congress was to achieve these lower interest rates in two ways:

First, the bill provided (in what became Section 12 of the Act, 12 U.S.C. 771, Second) that the Land Banks could charge borrowers only one percent more for interest than they paid their bondholders. Second, any profits earned by the system were to be returned to the borrowers. As this aspect of the bill was explained in S. Rep. No. 144, 64th Cong., 1st Sess. 5:

> The profits go to the local associations in the form of dividends on stock of the land bank held by the associations and reach the borrowers in the form of dividends on stock held by them in the associations. In this way the earnings of the system go to the borrowers * * *.

See also H. Doc. No. 494, 64th Cong., 1st Sess. 9; H. Rep. No. 630, 64th Cong., 1st Sess. 10. Of course, it was recognized that if there were any defaults that the bank could not otherwise recoup, these would have to come out of the profits (53 Cong. Rec. 7539). It was assumed, however, that (53 Cong. Rec. 7869):

> after the bank shall have been in operation some years a larger proportion of the earnings will probably be distributed in dividends, thereby reducing the rate of interest which the borrower may actually pay.

This theme—that earnings of the system would go to reduce interest rates—was constantly emphasized throughout the debates. See, *e.g.*, 53 Cong. Rec. 6693, 6697, 7021, 7536, 7541, 7883.

If interest rates were to be kept down by the application of profits, it was necessary to assure the Land Banks of profits; and to this end, tax immunity for the Land Banks was regarded as essential to the

accomplishment of the legislative purpose. Because "experience shows that the farmer has to pay all the taxes that are levied on the system" (53 Cong. Rec. 6697), it follows that "the only way we can guarantee that he will get the benefit of it is to exempt these instrumentalities from taxation" (*id.* at 7312). Senator Hollis made this observation (53 Cong. Rec. 7313):

> In order to allow these banks to exist we must pass laws that will allow them to be profitable, so that they can exist, and in order to allow them to be profitable we exempt them from taxation.

Senator Sterling insisted that to permit taxation against the Land Banks "will injuriously affect and perhaps prevent the very purposes of the act, because a lower rate of interest under those conditions will be impossible." 53 Cong. Rec. 7317. Again and again during the congressional debates (which in the Senate were concerned largely with the constitutionality of the tax exemption), it was recognized that the tax exemption was the key to accomplishing the salutary purposes of the legislation. See, *e.g.*, 53 Cong. Rec. 6697, 6851–52, 7023–24, 7311–12, 7537–38, 7726, 7923.

Thus, it is perfectly plain that "profit-making" on the part of Federal Land Banks, and the protection of those profits by tax exemption, are integral parts of the statutory scheme by which farmers are to be assured of mortgage loans at the lowest possible interest rates. And so, even if petitioner's reservation of mineral rights was not required to recoup losses suffered on the loan to which it related (see p. 4, *supra*),

that reservation and the royalties thereby derived were directly related to petitioner's primary statutory functions. Petitioner may have suffered losses on other defaulted loans against which the earnings from the property in question would provide an offset. And if that is not the case, then those earnings will be devoted to reducing the effective interest rates of the farmers borrowing from the system. In either event, the property in question and the earnings from it are contributing directly to the achievement of the purpose for which petitioner was created: lowering the farmer-borrowers' interest rates.

In short, whether or not these activities of petitioner be labeled "governmental," they were undertaken in pursuit of the ends for which Congress established the Federal Land Bank system. Accordingly, the tax exemption that Congress regarded as an integral part of that system is applicable. The failure of the Supreme Court of Kansas to recognize these facts is strikingly similar to the error this Court pointed out only last Term in *Laurens F. S. & L.* v. *South Carolina Tax Comm'n*, 365 U.S. 517, 522:

> [T]he necessary effect of the taxes is to increase the cost of obtaining the advances of funds from the Home Loan Bank to be used in making loans to home owners. In its impact, therefore, this tax, whether nominally imposed on the Bank or on the petitioner, is bound to increase the cost of loans to home owners and thus contravene the basic purpose of Congress * * *.

No less, to allow the State of Kansas to impose on petitioner a tax that must inevitably be passed on to

farmer-borrowers would plainly "contravene the basic purpose of Congress."

C. EVEN IF THERE WERE A QUESTION AS TO PETITIONER'S AUTHORITY TO HOLD THE PROPERTY IN QUESTION, IT WOULD BE EXEMPT FROM TAXATION

Although the Supreme Court of Kansas did not so decide, it suggested that there might be some question as to petitioner's authority to make the reservation of mineral rights involved in this case (R. 47–48). The court was apparently of the view that if petitioner lacked authority to retain the property in question, it could not assert the statutory immunity with respect to it. In fact, petitioner's authority to hold the property is clear; but even if that were not the case, there would be no basis for holding that the property is outside the statutory exemption.

Among the enumerated powers of the Federal Land Banks is the following (Section 13 of the Federal Farm Loan Act, 39 Stat. 372, 12 U.S.C. 781, Fourth):

> To acquire and dispose of—
>
> (a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.
>
> (b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing. • • •

The reservation of oil and gas interests involved in this case would seem to fall under the unqualified language of subsection (a). But even if it should be thought to involve "title and possession of any real estate purchased or acquired to secure any debt due to it," so that it cannot be held for more than five years without permission, the special approval of the Farm Credit Administration in writing has been given and duly published as a Regulation of the Administration (6 C.F.R. 10.64):

> *Holding mineral rights for more than 5 years.* In cases where, in connection with a sale of bank-owned real estate, the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both "title and possession" of real estate within the meaning of section 13 Fourth (b) of the Federal Farm Loan Act (12 U.S.C. 781 Fourth (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest to do so, has the approval of the Administration.

This Regulation was promulgated on January 1, 1943, and still remains in effect.

While the opinion is not altogether clear, it appears that the Supreme Court of Kansas may believe that, in holding the reservation of mineral rights at issue in this case for more than five years, petitioner was acting beyond the authority granted by the Farm Credit Administration. The court's theory seems to be that the FCA meant to permit the retention of

mineral interests for more than five years only where necessary to recoup losses from loan defaults (*i.e.*, that the FCA approval was "limited to the furtherance of the governmental function for which the bank was created") (R. 48). In the first place, there is no basis in the language of the Regulation for any such qualification. Secondly, as shown above (see pp. 15–21, *supra*), the holding of property for purposes other than the recoupment of particular losses (*i.e.*, for profit) is plainly in "furtherance of the governmental function for which the bank was created." Finally, if there is any question as to whether or not petitioner has over the years been acting within the scope of the FCA approval, it is for that Administration—the agency charged by Congress with the responsibility for close and continuing supervision over the Federal Land Bank system—to determine, not for the States.

The court below also suggests (R. 47–48) that the Farm Credit Administration's blanket approval of the retention of mineral interests "when in the bank's opinion it is in the bank's interest to do so" does not comply with the congressional requirement (in Section 13, Fourth, *supra*) of "special approval" by the FCA. On the contrary, we believe that the FCA's blanket approval is entirely consistent both with the administrative scheme established by Congress and with the purposes of the Federal Farm Loan Act. It is clear that, upon consideration, the FCA concluded that the decision as to whether mineral interests should be retained upon the sale of each parcel of foreclosed land was a purely local question, depend-

ing on the value of the land and minerals in question, the fiscal condition of the bank, the rate of interest prevailing locally, etc. That conclusion on the part of the responsible agency was entirely reasonable and is certainly not open to review in the courts of the States.

Moreover, this specific problem—the extent to which, and the circumstances under which, Federal Land Banks should be permitted to retain mineral interests—has been before Congress repeatedly over the years, and Congress has declined to interfere with the way the matter is being handled by the Farm Credit Administration. As long ago as 1940, a bill (H.R. 9290, 76th Cong.) was introduced that would have limited the authority of a Federal Land Bank to reserve mineral interests upon the disposition of acquired property to situations in which a reservation was necessary to recoup the investment of the bank in the particular property. An identical bill was introduced in 1945 (H.R. 667, 79th Cong.) and another in 1947 (H.R. 583, 80th Cong.). Congress did not adopt any of these proposals.[8]

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[8] Other bills introduced in Congress, but not passed, would have prohibited the Federal Land Banks from reserving mineral interests under any circumstances when disposing of acquired properties (H.R. 1791 and H.R. 2358, 80th Cong.; H.R. 1964, 81st Cong.; H.R. 428, 82d Cong.; H.R. 1313, 83d Cong.); still others sought not only to prohibit Federal Land Banks from reserving mineral interests, but also to require that the mineral interests already reserved and held by such banks should be sold to the owners of the surface land (S. 2904, 82d Cong.; S. 75 and H.R. 102, 83d Cong.; S. 538, 84th Cong.). See also, *e.g.*, Hearings before Senate Appropriations Subcom-

Moreover, even if petitioner's authority to hold the property in question were doubtful, it would not follow that the property is therefore subject to taxation by the State of Kansas. The interest sought to be taxed is concededly personal property (R. 41); the tax sought to be imposed is a personal property tax (R. 48); petitioner "owns" the property (Brief for Respondents in Opposition, p. 15); and, if it be relevant, the ownership contributes toward the salutary purposes of the Federal Farm Loan Act. In view of the express congressional provision that petitioner "shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate," these facts would seem clearly to establish entitlement to the exemption. Raising a question as to the authority of petitioner to hold the property does not derogate from the facts nor does it render the clear language of the exemption less compelling.

CONCLUSION

The personal property tax here sought to be imposed by a political subdivision of the State of Kansas upon the assets of a Federal Land Bank is plainly embraced by the express exemption from such taxation granted to such banks by Congress, and its imposition is therefore unconstitutional. The decision of the

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mittee on Agricultural Appropriations for 1958, 85th Cong., 1st Sess., 908–09, where the Governor of the Farm Credit Administration discussed the Land Banks' reservation of mineral interests with members of the subcommittee.

Supreme Court of Kansas sustaining the imposition of the tax should be reversed.

Respectfully submitted.

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APPENDIX

Federal Farm Loan Act (39 Stat. 360, as amended):

SEC. 13 [12 U.S.C. 781]. That every Federal land bank shall have power, subject to the limitations and requirements of this Act—

* * * * *

Fourth. To acquire and dispose of—

(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing. * * *

* * * * *

SEC. 26 [12 U.S.C. 931–933]. That every Federal land bank and every Federal land bank association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and Federal land bank associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

Farm Credit Administration Regulations (6 C.F.R. 10.64):

§ 10.64 *Holding mineral rights for more than 5 years.* In cases where, in connection with a sale of bank-owned real estate, the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both "title and possession" of real estate within the meaning of section 13 Fourth (b) of the Federal Farm Loan Act (12 U.S.C. 781 Fourth (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest to do so, has the approval of the [Farm Credit] Administration.

General Statutes of Kansas (1949):

79-329. *Oil and gas property as personalty.* That for the purpose of valuation and taxation, all oil and gas leases and all oil and gas wells, producing or capable of producing oil or gas in paying quantities, together with all casing, tubing or other material therein, and all other equipment and material used in operating the oil or gas wells are hereby declared to be per-

sonal property and shall be assessed and taxed as such. [L. 1917, ch. 323, § 1; March 13; R.S. 1923, § 79-329.]

79-330. *Same; valuation.* That in valuing for taxation, oil or gas properties consisting of one or more leases and oil or gas wells, there shall, in addition to the value of all oil- or gas-well material in or upon the leasehold properties, be made such valuation of the oil or gas wells as would make a reasonable and fair value of the whole property: *Provided,* That such portion of the valuation of the oil or gas wells as represents the lessor's interest, or royalty interest, therein shall be assessed to the owner thereof and the remaining portion or working interest therein shall be assessed to the owner of the lease, together with the other property assessed in connection therewith. [L. 1917, ch. 323, § 2; March 13; R.S. 1923, § 79-330.]

79-331. *Same; how value determined.* That in determining the value of oil and gas wells or properties the assessor shall take into consideration the age of the wells, the quality of oil or gas being produced therefrom, the nearness of the wells to market, the cost of operation, the character, extent and permanency of the market, the probable life of the wells, the quantity of oil or gas produced from the wells, the number of wells being operated, and such other facts as may be known by the assessor to affect the value of the property. [L. 1917, ch. 323, § 3; March 13; R.S. 1923, § 79-331.]

79-332. *Same; failure to list oil or gas property.* When any person, corporation or association owning oil and gas leases or engaged in operating for oil or gas shall refuse or neglect to make and deliver to the county assessor of every county wherein the property to be assessed is located, a full and complete statement relative to said property as required by blank forms prepared for the purpose by the commission of revenue and taxation to elicit the infor-

mation necessary to fix the valuation of the property as herein provided, such assessor shall list the property and shall from any information obtainable assess the same at its full value. [L. 1917, ch. 323, § 4; March 13; R.S. 1923, § 79–332.]

79–333. *Same; false statements.* That the assessor at any time shall have the right and power to examine the books and accounts of any person, company or association owning oil and gas leases or engaged in operating for oil and gas in order to verify the statement made by such person, company or association, and if from such examination or other information he finds such statement or any material part thereof willfully false he must assess the property in the same manner as if no statement had been made and delivered. [L. 1917, ch. 323, § 5; March 13; R.S. 1923, § 79–333.]

79–334. *Same; statements to be verified: perjury.* The statement required herein shall be made under oath and any person knowingly or willfully swearing to any false statement contained therein, shall be guilty of perjury and shall be prosecuted and punished as provided by law in other case of perjury. [L. 1917, ch. 323, § 6; March 13; R.S. 1923, § 79–334.]

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

No. 25.

THE FEDERAL LAND BANK OF WICHITA,
Petitioner,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA, STATE OF KANSAS, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF STATE OF KANSAS.

BRIEF FOR THE RESPONDENTS.

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BRIEF FOR THE RESPONDENTS.

QUESTIONS PRESENTED.

1. Whether the petitioner's personal property here involved is being held pursuant to one of the governmental functions delegated to petitioner by the Federal Farm Loan Act of July 17, 1916.[1]

2. If not, whether this personal property enjoys express immunity from state taxation under Section 26 of this Act or implied immunity under the Constitution.

1. 39 Stat. 360, as amended.

SUMMARY OF ARGUMENT.

The question presented by this case does not appear to have been previously decided by this Court. However certain fundamental principles governing the powers of federal instrumentalities which have been previously enunciated by this Court are pertinent here as they form the foundation upon which the decision of the Kansas Supreme Court was based. The federal government is as stated by this Court a government of delegated powers.[2] Federal instrumentalities created by Congress to carry out those delegated powers possess, in turn, only those powers which are expressly or impliedly delegated to them by Congress or which are incidental to the exercise of those delegated powers.[3] Powers which are not thus granted to a federal instrumentality have been held by this Court to be impliedly prohibited to them.[4] The scope and extent of those powers enjoyed by a federal instrumentality are to be found solely in the statute which created them.[5] Since the scope of the powers enjoyed by federal instrumentalities is defined and limited by these principles it would seem likewise fundamental to the federal system that the scope of the tax immunity expressly granted to one of them, such as the petitioner Land Bank, was intended to immunize only that property which is held by the instrumentality in furtherance of its delegated powers. It would also appear fundamental that Congress could not constitutionally extend the scope of tax immunity for property beyond the

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2. *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 95.

3. *Stark* v. *Wickard*, 321 U.S. 288; *California Nat'l Bank* v. *Kennedy*, 167 U.S. 362, 366.

4. *First Nat'l Bank* v. *Converse*, 200 U.S. 425.

5. *Bradfield* v. *Roberts*, 175 U.S. 291.

scope of the instrumentality's delegated power to hold property. For the holding of property which is not pursuant to and in furtherance of the instrumentality's delegated federal powers could not be said to be serving any governmental function and therefore would not be entitled to governmental tax immunity. This Court has held in *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 95, that:

> "* * * Congress has authority to prescribe tax immunity for activities connected with, or in furtherance of, lending functions of federal credit agencies." (l.c. 103.)

The corollary of this power must be that Congress has no power to grant tax immunity to property or activities which is not connected with or in furtherance of an instrumentality's delegated functions. Congress created the Land Bank, delegated to it certain powers and then inserted in the law an express tax immunity section (Section 26, Federal Farm Loan Act of 1916, 39 Stat. 380, 12 U.S.C. 931), which tax immunity section must necessarily be construed as a part of the entire statute. When this immunity section is construed as an integral part of the entire act the conclusion is inescapable that it was intended by Congress only to immunize that personal property which was being held by the Bank in furtherance of the powers delegated to the Bank in other parts of the Act. For it is not to be presumed that Congress intended that Land Banks should exceed their delegated powers and hold property in excess of those powers; therefore, it should not be presumed that Congress intended to grant tax immunity to any such unlawfully held personal property.

In this case the petitioner Land Bank acquired the property in the exercise of its power to protect its mortgage loan on the property. However, when it sold the property,

reserving one-half of the mineral estate, it fully recouped its mortgage loan and the loss suffered by reason of its mortgage foreclosure. Therefore the lawful purpose for which this property was originally acquired was at an end. There was no other statutory power of the Bank which would authorize it to retain this mineral estate. Retention of the mineral estate *solely* for the purpose of speculating on future mineral developments or for the purpose of profiting by engaging in the oil and gas business through leasing it for production is not an express, implied or incidental power of the Bank and such property was therefore not entitled to tax immunity. Petitioner apparently does not contend that the holding of this particular mineral estate was an incident to protecting its debt or recouping its loss on the foreclosure. Ownership and development of such real property would appear to be authorized only where such activity was an incident to protecting and recouping mortgage indebtedness on the property.

The petitioner argues that it is organized in part for profit and therefore it is not foreclosed from engaging in this business activity and ownership (or, presumably, any business activity or ownership) so long as such ownership and activity is profitable.[6] But the only profits the Bank is authorized to make are those which arise from the exercise of its delegated powers—notably the interest it receives on its loans. When the Land Bank was spoken of by this Court in *Federal Land Bank* v. *Priddy*, 295 U.S. 229, at page 233 as being organized "in part at least, for profit,"

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6. "Thus, even if petitioner's retention of the mineral interest in question served no other purpose than to make a profit (a profit that would necessarily be passed on to farmer-borrowers under the cooperative features of the system), it was advancing the central purpose of the Federal Land Banks and was entitled to tax exemption." (Brief of Petitioner, p. 7.)

this Court had specific reference to Section 5 of the Federal Farm Loan Act of 1916[6a] which provides for the payment of dividends by the Land Bank, which dividends ultimately reach private investors. The profit-making there described had reference to the somewhat unique fact that private individuals obtained earnings in the form of dividends from an investment in a federal instrumentality. In this sense the Land Bank is spoken of as a profit-making institution as compared to the usual concept of a government instrumentality as non-profit. But this does not mean that the Bank was given the power to engage in any activity or own property solely because it is profitable, as Petitioner would appear to argue.

Since the property here involved is not being held in furtherance of Petitioner's delegated powers the tax exemption granted by Section 26 of the Federal Farm Loan Act of 1916 was not intended to nor could it constitutionally be extended to cover this property. The reason for governmental tax immunity—the protection of governmental functions—therefore fails of application here and the existence of tax immunity likewise fails under the facts of this particular case.

6a. 39 Stat. 1364, 12 U.S.C. 694.

ARGUMENT.

A. Petitioner Is Not Holding the Mineral Estate in the Furtherance of Any of Its Delegated Powers and Therefore No Governmental Function Is Involved in Its Ownership or in the Business Use to Which It Has Been Devoted.[7]

It seems clear from an examination of the Federal Farm Loan Act of 1916, as amended, that Congress intended that the Land Bank would acquire and hold farm lands only as an incident to its primary function of loaning money to farmers on the security of first mortgages on farm lands. It does not appear from the Act that Congress intended the Bank to become the proprietor and operator of farm land or of mineral estates solely for the sake of owning such property or solely for the purpose of speculation and profit from some business development and use of the land.

Section 13 of the Federal Farm Loan Act of 1916 defines and limits the purposes for which real estate may be owned by the Bank. The property here in question was lawfully acquired by the Bank in 1943 pursuant to the provisions of this Section which authorize the Bank "To acquire and dispose of * * * (b) parcels of land acquired in satisfaction of debts or purchased at sales under judg-

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7. In this case the Bank has leased the mineral estate for production and is deriving royalty payments as an incident to the lease; it is these royalties which have been subjected to the personal property tax by Kiowa County. Since the right to receive the royalties is based solely upon the Bank's ownership of the mineral estate, it follows that the absence *of any* federal function in holding the mineral estate necessarily results in the absence of a federal function in the receipt of royalties from its leasing.

ments, decrees or mortgages held by it * * *."[8] The purpose of this section obviously was to grant to the Bank the power to protect its mortgage debt and recoup its loss on foreclosure sales of property upon which it had loaned money. The power to deal with the property thereafter must be measured in terms of this original purpose of acquisition. Thus, in *Federal Land Bank* v. *Bismarck Lumber Co.*, 314 U.S. 591, this Court found that the Land Bank had the incidental power to purchase lumber in order to repair a farmstead which it had acquired upon foreclosure in order to protect the property and put into proper condition for resale. Since this purchase of lumber was but an incident to the Bank's power to protect and recoup its loan on the property, this Court found that it was immune from a sales tax imposed upon the purchase. But in this case the Bank's ownership and dealing with this mineral estate is no longer an incident to the original purpose for which the property was acquired in 1943, to-wit, protecting and recouping its financial loss on the property.

A national bank also possesses money-lending power and in carrying out this power its authority is substantially similar to that of the Land Bank. The following reasoning by the United States Circuit Court of Appeals in *Atherton* v. *Anderson*, 186 F.2d 515 (C.A. 6), is akin to the reasoning which respondent submits should apply here:

> "The controlling principle seems to us to be that while the bank has no power, either express or implied, to enter upon an original speculative enterprise, yet as an incident to its express powers, the bank has a right to acquire property, to put it into condition for resale, and where such property is a manufacturing establishment whose value depends substantially upon uninterrupted operation, we think implied power exists

8. 39 Stat. 372, 12 U.S.C. 781 Fourth (b).

to continue such operation for a time *providing the primary purpose of the bank is to save its debt rather than speculate in future profits* * * *." (l.c. 525) (Emphasis supplied.)

Since the Land Bank had fully recouped its loss on the property by 1946 the subsequent retention of the mineral estate obviously was not for the purpose of protecting its original debt on the property but was in the nature of speculation in the oil and gas business in the anticipation of future profits and was therefore not an incident to the Bank's money-lending functions.

The effect of the Bank's retention of the mineral estate, in the absence of any continuing need to protect or recoup a debt secured by this property, was the same as if the Bank had invested some of its funds in the outright purchase of a mineral estate solely for the purpose of speculating in future mineral discovery and profiting from the development and leasing of such minerals. In that case, as in the case at hand, it would seem beyond argument that the Bank's ownership was not related to nor an incident of its money-lending functions but would be, instead, a separate, independent and unauthorized business operation engaged in outside the scope of the Bank's delegated governmental functions delineated in the Federal Farm Loan Act of 1916.

The property in which the Bank may invest its funds is enumerated in the Federal Farm Loan Act of 1916. The Bank's primary investment is in first mortgages on farm lands.[9] Also the Bank is specifically authorized to invest in United States Government obligations direct or fully guaranteed.[10] But the Act does not authorize the Land Bank

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9. 39 Stat. 372, as amended, 12 U.S.C. 781, Second.

10. 39 Stat. 372, as amended, 12 U.S.C. 781, Eighth.

to invest its funds in the ownership of farm property or in mineral estates. In other words, while the Bank may acquire and hold such property when it is necessary as an incident to fulfilling its money-lending function and recouping on loans, it has been granted no independent power to own and invest in mineral estates or in oil and gas speculations *per se*. There is a material distinction between owning property as an incident to a Bank's money-lending function to secure an indebtedness of the Bank, which ownership is authorized, and the independent holding of the same property by the Bank solely as a business investment for profit, which is not authorized. This Court recognized a parallel distinction in the case of a national bank's ownership of corporate stock in *First National Bank* v. *Converse*, 200 U.S. 425. In that case this Court said:

> "No express power to acquire the stock of another corporation is conferred upon a national bank * * * (A) national bank may be conceded to possess the incidental power of accepting, in good faith, stock of another corporation *as security for a previous indebtedness. It is clear, however, that a national bank does not possess the power to deal in stocks. The prohibition is implied from the failure to grant the power* * * *." (l.c. 438, 439.) (Emphasis supplied.)

Applying the reasoning of *First National Bank* v. *Converse, supra,* to this case it appears that the Bank is treating this mineral estate as though there existed a separate and independent function of the Bank to hold, speculate and profit from real property even though the Act grants them no express and independent power to do this. Under Section 13 of the Act the Bank is granted the authority to acquire real property in satisfaction of debts and upon mortgage foreclosures and this power, construed in light of the primary money-lending function of the Bank, basically limits the Bank to holding and dealing with real property

acquired as security for a previous indebtedness with the primary purpose always in mind that the holding is for the purpose of securing its indebtedness and making itself whole again from the loan transaction. Here, as in *First National Bank* v. *Converse*, *supra*, the Bank enjoys no separate and independent power to invest in or to keep its funds invested in certain property (here, real estate, and in the *Converse* case, stocks) for speculation of profit without regard as to whether such holding was necessary and incidental to its money-lending function.

If Congress had intended the Bank to have the independent power to hold real property as a valid investment for the Bank's funds and if Congress intended that this power be separate and unrelated to any need to protect an indebtedness on the property it could have stated this intention by inserting an appropriate statement of this broad power in the Act, as it has done, for example, in the case of first mortgage loans and United States Government obligations.

While it is clear that the Bank has the power to take title to real property under Section 13 of the Act in satisfaction of debts or purchased at sales under judgments, decrees or mortgages held by it, when the Bank sold part of the property in 1946 and satisfied its debt the subsequent retention of part of the property could no longer be based upon its power to hold property as security for the debt; some *other* authorized purpose must exist if such continued and prolonged holding of the mineral estate is to be justified and found to be within the scope of the Bank's delegated governmental powers.

What other authorized purpose does the petitioner advance as justification for the continued holding of the mineral estate after 1946? At page 19 of its Brief peti-

tioner apparently concedes that the "reservation of the mineral right was not required to recoup losses suffered on the loan to which it related." At page 20 of its Brief petitioner suggests that it "may have suffered losses on other defaulted loans against which the earnings from the property in question would provide an offset." However there are no facts in the record to support this speculation. If petitioner had evidence of such facts and felt they were favorable to its case, it has failed to introduce them into the record of this case.

The petitioner's chief argument in support of its power to hold this mineral estate is this: if the retention of the mineral estate "served no other purpose than to make a profit (a profit that would necessarily be passed on to the farmer-borrower under the cooperative features of the system), it was advancing the central purpose of the Federal Land Banks and was entitled to tax exemption."[11]

Petitioner may be basing its argument that it enjoys the power of "profit-making" on a statement by this Court in *Federal Land Bank* v. *Priddy*, 295 U.S. 229. This Court there stated at page 233 that the Land Banks operate "in part, at least, for profit. § 5." In the *Priddy* case, however, this Court was not referring to the manner in which the Bank was authorized to earn its money but rather to the manner in which the Bank was authorized to distribute its earnings (*i. e.*, in the form of profits to its shareholders). Section 5 of the Act referred to by this Court in the above quotation permits dividends to be distributed by the Bank to its shareholders. This Court clearly was using the term "profits" in the sense that private individuals were authorized to receive dividends from their investment in a federal instrumentality which practice is in noteworthy contrast to

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11. Brief for the Petitioner, p. 7.

the more usual description of a governmental instrumentality as "non-profit".

However, petitioner has taken the word "profit" and evidently misconstrued its meaning so that it now argues that since it distributes "profits" to its shareholders this alone justifies and authorizes it to engage in "profit-making" activities and to own real property such as here involved solely on the basis that such ownership yields a "profit".

The fallacy in the chain of reasoning by which petitioner reaches the conclusion that the Act grants it the power to "profit" from the ownership and use of real property is this: petitioner points out that Section 5 of the Act specifically empowers it to distribute some of its earnings to its stockholders in the form of dividends causing a profit to be made by private individuals and thereby reducing the effective rate of interest paid by those individuals (who are also the farmer-borrowers). Since the ownership, speculation and development of mineral estates makes a "profit" it therefore, petitioner reasons, "contributes toward the salutary purposes of the Federal Farm Loan Act."[12]

This chain of reasoning mistakenly confuses the manner in which the Act authorizes petitioner to *distribute* its earnings (*i. e.*, as profits to farmer-borrowers) with the manner in which it may *obtain* its earnings in the first place. The plain fact is that Section 5 of the Act does not tell the Bank in what manner it may earn its profits but it only describes the manner in which it may distribute them.

Clearly the only profits which the Bank may earn are those which derive from the valid exercise of the Bank's statutory powers. Section 13 of the Act contains a de-

12. Brief for the Petitioner, page 25.

scription of the powers of the Bank which give rise to its earnings or profits. Obviously the Bank was designed to obtain its earnings primarily from its investment in first mortgage loans.[13] It was also specifically authorized to invest in government obligations.[14] Other earnings which might accrue to the Bank through ownership of property acquired in satisfaction of debts would be mere incidental profits arising from the Bank's primary money-lending function. At no place in the Act does there appear any statement of the power of the Bank to own property for the purpose of "profit-making". The extreme position taken by the petitioner that it enjoys the broad power of "profit-making" from property is based upon a mistaken understanding of the term "profit" as applied to the Bank.

If petitioner's reasoning concerning its power to own and operate property for profit's sake alone is correct then it would have the power to own any property which yielded a profit. There would be no discernible limit upon the extent of the property which the petitioner would be authorized to purchase and own nor would there be a limit upon the purposes to which the property could be devoted so long as it met petitioner's test of "profit-making".

Under petitioner's reasoning, for example, it would have the power to refine the oil and distribute the gas obtained from this mineral estate. It would also have the power to arrange for the marketing and retail sale of this oil and gas after its refining and transmission. And it goes without saying that the Federal Land Bank service station would be exempt from remitting state gasoline taxes on its retail sale of gasoline. In each of these instances the onwership and business activity of the property involved

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13. 39 Stat. 372, 12 U.S.C. 781, Second.

14. 39 Stat. 372, 12 U.S.C. 781, Eighth.

would meet petitioner's test of "profit-making" and hence would be permissible to the Bank if it so chose to operate.[15] It is not relevant to argue that the petitioner has not yet gone this far in dealing with this mineral estate and its incidents because the question here involved goes to the scope of petitioner's powers and not to the extent to which it has thus far chosen to exercise them.

In summary, petitioner's contention that it enjoys the broad power to engage in "profit-making" activities since they result in greater profits to the farmer-borrowers finds no support in the Act.

Section 13, Fourth of the Act, which authorizes the Bank to take title to real property in satisfaction of debts, also contains a provision as follows:

> "(b) * * * But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it for a longer period than five years, except with the special approval of the Farm Credit Administration in writing * * *."[16]

It is respondents' position that the "special approval" which might be granted by the Farm Credit Administration to a Land Bank to hold property in excess of five years in no way broadens the basic limitation on the Bank's power to hold property only as an incident to its money lending function. Congress evidently intended to insure that the Land Banks would not retain title to property for protracted periods of time and, as a check against possible

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15. The petitioner's concept of its "profit-making" power would likewise justify it holding and operating for profit that farm property which it might acquire in mortgage foreclosure actions without regard to whether such holding was necessary to protect its indebtedness.

16. Federal Farm Loan Act of 1916, 39 Stat. 360, as amended, 12 U.S.C. 781, Fourth (b).

abuses of their power, Congress inserted this provision requiring "special approval" by the Farm Credit Administration before ownership could exceed five years.

From the nature of the Land Bank and its ownership by private individuals who stood to profit from its operations, it can readily be seen why Congress intended that an outside agency such as the Farm Credit Administration have some check upon the individual Banks in their ownership of real property. It was not intended by Congress that the Farm Credit Administration could authorize Banks to hold property after five years except to fulfill one of the delegated functions of the Bank such as protecting and recouping its indebtedness on a mortgage loan.

Although it is respondents' position that the Farm Credit Administration cannot in any event expand the purposes for which the Bank may own real estate, Respondents do wish to comment on the purported "special approval" granted by the Farm Credit Administration to all of the individual Land Banks, under its regulation, Farm Credit Administration Regulation, 6 C.F.R. 10.64. It is clear that the "special approval" spoken of by Congress in the Act created and delegated to the Farm Credit Administration a discretionary power to approve or disapprove ownership of particular real property beyond five years. In order for the Farm Credit Administration to exercise its discretionary power, it is necessary that it consider and evaluate the purposes or needs which an individual Bank might claim to be involved in seeking approval to hold property beyond five years. But the Farm Credit Administration has improperly purported to delegate its discretionary power to the Land Banks by the terms of this regulation.

Under the terms of this Farm Credit Administration Regulation Land Banks are granted the blanket power to

retain mineral interests "for periods in excess of five years when in the Bank's opinion it is in the Bank's interest to do so." Thus the decision to retain or not to retain a particular mineral interest in real property is left entirely up to the individual Bank, and, under the terms of this Regulation, need not be referred to the Farm Credit Administration for its evaluation and approval. It is a fundamental rule of administrative law that discretionary powers held by an administrative body may not be further delegated to some other officer or body. (*Cudahy Packing Company* v. *Holland*, 315 U.S. 357.) The Farm Credit Administration Regulation quoted above violates this principle that discretionary functions may not be redelegated. In effect, the Bank grants *itself* its own "special approval" to retain mineral estates beyond five years.

The property in question in this case has been held by the Bank in excess of five years pursuant to this improper Regulation and, therefore, the "special approval" required by the Act has not been properly granted by the Farm Credit Administration to the Bank for this prolonged holding. However, as noted, whatever force and effect, or lack of it, the Farm Credit Administration Regulation would have, it cannot, for the reasons stated, broaden the Bank's power so as to authorize it to hold this mineral estate in the manner and for the sole "profit-making" purpose under which it is presently being held.

The petitioner refers on page 24 of its Brief to certain bills introduced in Congress specifically dealing with the Land Bank's power to hold mineral estates, which bills did not pass the Congress. But the reason or reasons why these bills did not pass is sheer speculation. Perhaps Congress (or the committee where the particular bill died) felt that the scope of the Bank's powers and function was adequately delineated by existing legislation or that in

some cases the bills unnecessarily restricted the Banks from holding mineral interests where necessary to protect and recoup their mortgage debts; but this is, as stated, idle speculation and scarcely helpful to this Court in determining the question of whether the Bank had the power to retain the mineral estate in this case.

B. Personal Property Which Is Not Being Held by the Bank Pursuant to One of Its Delegated Powers but Is, Instead, Being Held Outside the Scope of Those Powers Does Not Enjoy Express Immunity from Taxation under Section 26 of the Federal Farm Loan Act of 1916, nor Does It Enjoy Implied Immunity under the Constitution.

The reason and justification for the rule of governmental tax immunity, whether it be implied immunity under the Constitution or express immunity granted by a statute such as Section 26 of the Federal Farm Loan Act of 1916, is the necessity to protect the lawful operations of the United States, acting through its instrumentalities.[17] In *Smith* v. *Kansas City Title and Trust Company*, 255 U.S. 180, this Court said, at page 213:

> "The exercise of such taxing power by the states might be so used as to hamper and destroy the exercise of authority conferred by Congress, *and this justifies the exemption.*" (Emphasis supplied.)

In *Pittmann* v. *Home Owners' Loan Corporation*, 308 U.S. 21, this Court said:

> "Congress has not only the power to create a corporation to facilitate the performance of governmental functions, but has the power to protect *the*

17. *Smith* v. *Kansas City Title and Trust Company*, 255 U.S. 180; *M'Culloch* v. *Maryland*, 4 Wheat. 316.

operations thus validly authorized." (l.c. 32, 33.) (Emphasis supplied.)

Thus it appears that the purpose of governmental tax immunity is to protect the operations of a federal instrumentality which are validly authorized and conferred upon such instrumentality by Congress. But where, as here, a federal instrumentality is owning and using property *not* in the performance of its governmental functions and not in the exercise of the authority conferred upon it by Congress, no reason or justification exists for finding that governmental tax immunity is, or ever was, intended to apply to it. It would be impossible for a tax upon property being held by an instrumentality such as the Land Bank outside the scope of its delegated power to interfere with the performance of *any* governmental function.

There has been no effort, intent or design on the part of the State of Kansas to tax any of the governmental property or purposes validly authorized to the Federal Land Bank by Congress. The imposition of this tax was specifically based upon the finding that this mineral estate held under these facts and circumstances was not being lawfully held by the Bank in furtherance of any of its delegated functions. Therefore the imposition of this tax in no way conflicts with the principles, reasoning or justification for governmental tax immunity which have been so clearly enunciated by this Court in a long line of decisions commencing with *M'Culloch* v. *Maryland,* 4 Wheat. 316; in fact the reasoning and justification for the tax immunity in those cases is entirely consistent with the imposition of the tax in this case, where no governmental function is involved.

When Congress enacted Section 26 of the Federal Farm Loan Act of 1916, did it intend that the tax immunity there

granted would extend beyond the rest of the Act and immunize property of the Land Bank which it might unlawfully hold outside the scope of its delegated functions? It would defeat logic and reason to argue that the same Congress which had defined and limited the powers of the Land Bank in other sections of the Act would insert a tax immunity section in the same Act with the intention that it ever be construed to be broader in scope than the rest of the Act or that was intended to protect property which it had not authorized the Land Bank to hold.

Construing the Act as a whole, the tax exemption granted to personal property by Section 26 of the Act must be construed to be limited to only that property being held or used by the bank in furtherance of those powers delegated to the bank by other sections of the Act. For it was the intention of Congress to immunize the Bank from taxation on personal property when the bank was engaged in the accomplishment of those functions which the Congress was therein delegating to it. It cannot rightfully be presumed that Congress ever intended for the Land Bank to exceed its delegated powers or to own property or engage in activities outside the scope and not in pursuance of those delegated powers. Therefore, it would be illogical to argue that Congress intended the tax immunity section to extend to such forbidden activities or unlawfully held property. That the tax immunity section is no broader in scope than the Act of which it forms a part would seem to be the only reasonable construction which could be placed on the Section.

Petitioner has quoted at length in its brief from discussions by congressional committees relating to tax exemption for the banks.[18] But here again the force of reason

18. Brief of Petitioner, pages 17 to 19.

and logic would compel the conclusion that these legislators were discussing tax immunity only as it would be extended and applied to the lawfully delegated functions of the Land Bank. Again it would be improper to assume that these gentlemen in their remarks were intending that the Banks exceed their delegated powers. And it would be likewise improper to assume that they were intending in their remarks that the tax exemption for which they were arguing would extend to any such unlawfully held property.

But assuming that Section 26 of the Act is construed to extend tax immunity to such unlawfully held property as here involved, such a construction would result in a situation where the Section would be unconstitutional in its operation. If the Congress has not authorized the Bank to hold this property under these circumstances, then there can be no governmental function involved; that is, the holding of the property cannot be traced back through the Act to Congress and thence to the Constitution and the people. It, therefore, follows that the Congress would lack the power to immunize such property from taxation since the granting of such immunity necessarily would *not* be in furtherance of any of the powers exercised by Congress under the Constitution. Therefore, to avoid this unconstitutional result, Section 26 should not be construed to extend to this property held by the Land Bank outside the scope of its governmental functions.

In *Bank of Commerce* v. *Tennessee*, 104 U.S. 493, this Court dealt with a bank created under the laws of Tennessee, which bank enjoyed exemption from all taxation other than a specific tax on its capital stock. The bank had the authority to hold real property in order to transact its business. The bank owned property on which a building was situated and it leased part of the property for purposes

other than its business. In speaking of the scope of the tax exemption available to the bank, this Court said:

> "The bank had no express authority to invest its capital in real property not required for that use. And it is to be presumed that the exemption from other than the designated taxes (on stock) was in consideration that the capital would be employed for its legitimate purposes. It certainly would not be pretended that the corporation by turning its whole capital into real property and engaging in the real estate business, could then, by force of the charter, escape liability to taxation for it under the general laws. But if the exemption could not be carried to that extent, it is difficult to fix any limit to the amount of real property which it may hold thus exempt, unless we take that prescribed by the charter. In our judgment, the limited exemption cannot be extended to property used beyond the actual wants of the corporation in carrying out the purposes of its creation. As well observed by the Supreme Court of the State, the contract of exemption, beyond the extent prescribed, ceased when taxable property was held for any other purpose.
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> "* * * (W)here the purpose for which a corporation may hold property is specified in connection with the exemption, the limitation of taxation designated must be held to *apply only to property acquired for such purposes.*" (l.c. 495.) (Material in parenthesis and emphasis supplied.)[19]

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19. And see also *Central Methodist Church* v. *Meridian*, 126 Miss. 780, 89 So. 650, where a Mississippi statute provided that all property belonging to any religious society was exempt from all taxation. The church acquired property in excess of that which another statute prescribed it might own. The court said: "We think this principle is sound; that it never was the purpose of the legislature to exempt from taxation any more property than the religious society could lawfully hold. The property involved here is in excess of the amount of property which a religious society can hold and it cannot be heard to claim an exemp-

This case supports the view that a tax exemption provision in a statute should not be construed to apply to property which may not be lawfully held under some other provision of the statute.

The Petitioner contends that even if there is a question or doubt as to its authority to hold this property, the property is nevertheless exempt under the "clear language of the exemption".[20] Petitioner's contention in this respect does not consider, however, the constitutional problem raised where this property is not being held pursuant to some delegated authority. Petitioner seems to argue that even if its ownership of the property was not authorized by Congress, Congress would nevertheless have the power to immunize such property. But petitioner does not explain how the lack of a governmental function in such a case could be overcome by the Congress and the tax immunity extended to the property in the absence of such governmental function.

It is a fundamental principle that where the reason for a rule of law ceases to apply the rule itself ceases.[21] This Court has said that the justification of governmental tax immunity for federal instrumentalities lies in the protection it affords to governmental functions exercised under an authority conferred by Congress.[22] The decision of the Kansas Supreme Court is based upon the finding that the property here taxed was not being used in furtherance

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tion from taxation, in a court of equity, of property which it holds in violation of the public policy and the laws of the land." (l.c. 652.)

20. Petitioner's Brief, page 25.

21. *Coke on Littleton*, Section 70b.

22. *Pittman* v. *Home Owners' Loan Corp.*, 308 U.S. 21; *Smith* v. *Kansas City Title and Trust Co.*, 255 U.S. 180.

of a governmental function conferred by Congress. From this finding the Court below concluded:

> "* * * (T)hat the Congress in enacting the exemption provision in sec. 931, above (Section 26), intended that the tax immunity there provided should apply only when the bank is engaged in the furtherance of its governmental function. Under the facts before us, how does the imposition of this personal property tax impede or interfere with the legitimate function of the federal instrumentality involved? It does not—and when the reason for the rule of tax immunity, namely, the protection of functions of government—fails—the rule fails." (R. 51.)

The decision below is in harmony with previous decisions of this Court and results from the proper and logical application of the principles of governmental tax immunity announced in those previous decisions to the facts of this case.

CONCLUSION.

The property here sought to be taxed is not being held by the petitioner Land Bank in pursuance of any of its governmental functions. Therefore the functions of government cannot be impaired or impeded by such taxation. The Kansas Supreme Court correctly concluded that the property was not therefore expressly or impliedly immune from taxation and its decision refusing to enjoin the tax should be sustained.

Respectfully submitted,

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